2302

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 191.

BRAINARD H. WARNER AND LOUIS D. WINE, APPELLANTS,

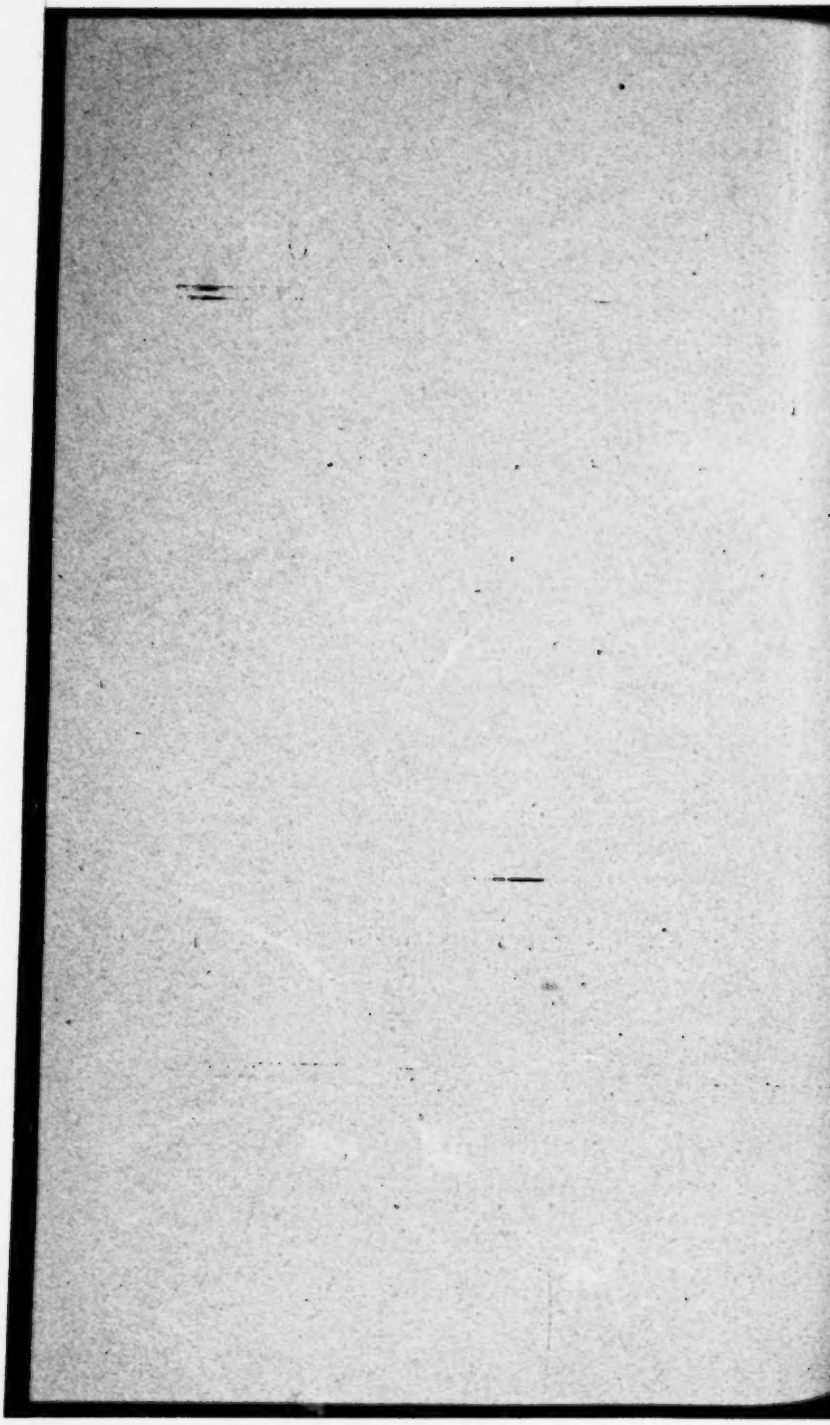
vs.

LILY ALYS GODFREY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 10, 1900.

(17,965.)



(17,965.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

No. 191.

BRAINARD H. WARNER AND LOUIS D. WINE, APPELLANTS,

vs.

LILY ALYS GODFREY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from the supreme court of the District of Columbia	1	1
Caption	1	1
Original bill	1	1
Exhibit A—Agreement between Stephen A. Dutton and Lily Alys Godfrey, March 26, 1896	8	9
Answer of Louis W. Richardson	11	11
Exhibit L. W. R. No. 2—Title certificate	16	15
No. 3—Deed, Dutton to Richardson, April 13, 1896	18	17
No. 1—Agreement, Dutton and Richardson, April 10, 1896	20	19
Decree *pro confesso*, &c.	21	20
Memorandum: Leave granted to file amended bill	22	22
Amendment of bill	22	22
Memorandum: Leave granted to further amend bill	23	23
Amended and supplemental bill	24	23
Interrogatories to defendants	34	33

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 1, 1901.

	Original.	Print
Answer of Warner and Wine	38	37
Answers of Warner to interrogatories	45	44
Answers of Wine to interrogatories	48	47
Exhibit A—Letter, M. A. Godfrey to B. H. Warner & Co., April 18, 1896	51	50
Additional affidavit of Louis D. Wine	52	51
Amendment of amended and supplemental bill	52	51
Additional interrogatories	52	51
Amended affidavit of B. H. Warner	56	55
Answers of Wine to additional interrogatories	57	56
Answers of Warner to additional interrogatories	59	58
Replication to answers of Warner and Wine	62	61
Answer of Louis Wine Richardson	62	61
Replication to answer of Richardson	67	66
Testimony on behalf of complainant	67	66
Testimony of Jeremiah Gallivan..(omitted in printing)..	67	—
J. Roberts Foulke (parts omitted in printing)	83	66
James H. Langley..(omitted in printing)..	88	—
Louis W. Richardson (parts omitted in printing)	119	70
Deed, Louis W. Richardson to Warner and Wine, April 15, 1896	140	88
Deed, Stephen A. Dutton to Richardson, April 13, 1896	142	90
Testimony of Edgar P. Berry..(parts omitted in printing)..	144	91
John B. Wight	149	94
Contract of sale, April 10, 1896....(omitted in printing)..	161	—
Testimony of Wm. E. Edmonston	162	108
Edwin C. Baumgras	175	123
Beverly H. Robertson	189	137
John F. Lacey	192	141
Daniel H. Kent	193	142
Bernard P. Mimack	198	148
John S. Blankman	202	153
James E. Fitch	206	157
John Joy Edson	213	165
Richard W. Tyler	217	169
Wm. H. Saunders	221	174
Carrie L. Benson....(omitted in printing)..	224	—
Lily Alys Godfrey	233	178
Complainant's Exhibit No. 1—Certificate of organization of Chapin, Randolph & Company..(omitted in printing)..	268	—
Complainant's Exhibit No. 2—Letter of A. K. Phillips to Mrs. Mary Alice Godfrey, March 2, 1895 (omitted in printing)	270	—
Complainant's Exhibit No. 2 of April 8, 1898—Letter of B. H. Warner & Co. to Mrs. Godfrey, August 7, 1894 (omitted in printing)	271	—
Complainant's Exhibit No. 3—Card of A. K. Phillips (omitted in printing)	271	—
Complainant's Exhibit No. 4—Note of A. K. Phillips to Mrs. Godfrey, January 16, 1895..(omitted in printing)..	271	—

	Original.	Print
Complainant's Exhibit No. 7—Letter of M. A. Godfrey to B. H. Warner & Co., April 18, 1896 (omitted in printing)..	272	—
Testimony of Henry J. Gross.....(omitted in printing)..	272	—
Affidavit of Louis D. Wine.....(" ")..	272	—
Testimony of T. Conrad Dodge.....	274	216
Charles J. Bell.....	283	226
Stilson Hutchins	289	232
Ezra J. Sterling ....(omitted in printing)..	291	—
Thomas F. Morris...(" ")..	297	—
Complainant's Exhibit I—Indictment against Stephen A. Dutton.....(omitted in printing)..	298	—
Testimony of Henry Metzler.....(" ")..	306	—
Frederick Straus....(" ")..	316	—
Henry Metzler.....(" ")..	317	—
R. H. Bohm.....(" ")..	325	—
Florence A. Ives....(" ")..	336	—
Elizabeth J. Pomfret.(" ")..	341	—
Timothy J. Kane ...(" ")..	346	—
Darius E. Robbins...(" ")..	353	—
John Standinger....(" ")..	360	—
Elizabeth King Harding (omitted in printing).....	365	—
Henry R. Dulany.....	371	235
Letter, Darlington to Wilson, February 23, 1898 (omitted in printing).	374	—
Letter, Rheem to Warner, February 28, 1898 (omitted in printing).....	374	—
Letter, Warner to Darlington, February 23, 1898 (omitted in printing)	375	—
Testimony of Frederick C. Stevens.....	376	238
Henry J. Gross.....(omitted in printing)..	379	—
Affidavit of B. H. Warner.....(" ")..	380	—
Testimony of James R. Ellerson.....	381	242
Charles E. Banes	385	246
Offers of deeds, &c..... .....(omitted in printing)..	390	—
Complainant's Exhibit No. 10—Power of attorney from Dutton to Czaki, April 15, 1896 (omitted in printing)...	391	—
Testimony of Wm. B. Gurley.....	392	252
W. Riley Deeble.....	399	259
Affidavit of Louis D. Wine.....(omitted in printing)..	405	—
B. H. Warner.....(" ")..	407	—
Testimony of John C. Davidson	409	266
Memorandum as to deeds.....(omitted in printing)..	411	—
Testimony of George C. H. Schomberg (omitted in printing).....	412	—
Testimony of Allen A. Dutton ...(omitted in printing)..	422	—
Archibald M. McLachlen	452	268
Complainant's Exhibit No. 1, May 4, 1898—Notice of B. H. Warner & Co. to owners.	461	275
Testimony of O. T. Southworth...(omitted in printing)..	462	—
Lorin Blodget.....(" ")..	479	—
Testimony for defendants.....(omitted in printing)..	498	—
Testimony of Henry H. Proctor...(" ")..	498	—

	Original.	Print
Testimony of Ellen A. Proctor.....(omitted in printing)..	501	—
Geo. A. Upton.....(" ")..	509	—
Florence A. Ives....(" ")..	519	—
John Staudinger....(" ")..	521	—
Carrie L. Benson....(" ")..	553	—
Timothy J. Kane....(" ")..	634	—
O. T. Southworth .. (" ")..	640	—
Elizabeth K. Harding (" ")..	643	—
D. E. Robbins. .. ..(" ")..	648	—
Allan A. Dutton ..(" ")..	650	—
R. H. Bohm..... (" ")..	664	—
Exhibit A—Statement, signed John Staudinger, March 26, 1898 (omitted in printing)	672	—
B—Statement, signed John Staudinger, March 26, 1898 (omitted in printing)	672	—
I—Statement of Carrie L. Benson (omitted in printing).....	673	—
1—Interview with Mrs. Benson (omitted in printing)	680	—
2—Statement of R. H. Bohm, May 11, 1896 (omitted in printing).....	681	—
Testimony of Anthony Comstock..(omitted in printing)..	681	—
John W. Rockwell..(" ")..	727	—
Darius E. Robbins..(" ")..	747	—
James Hanse.....(" ")..	751	—
Wm. F. Hennessy...(" ")..	779	—
Louis F. Dittman...(" ")..	819	—
Sam'l P. Williams..(" ")..	828	—
Dennis J. McCarthy.(" ")..	831	—
Edward E. Levi....(" ")..	854	—
Mrs. Mary Dutton..(" ")..	858	—
Fred'k P. Delafield..(" ")..	858	—
Bernard Goldstein..(" ")..	860	—
Wm. F. Hellen.....(" ")..	863	—
Chas. W. Fairfax.....	880	275
George W. Linkins.....	881	277
John A. Hamilton	888	284
Albert A. Wilson.....	893	290
Charles W. Fairfax (recalled).....	897	295
Louis P. Shoemaker.....	899	296
Chas. C. Duncanson.....	909	307
Albert F. Fox.....	918	317
Charles Early.....	921	320
Matthew Trimble.....	924	323
Chas. W. Simpson	931	332
George E. Emmons.....	933	333
Sam'l Ross.....	938	339
W. Clarence Duvall.....	941	341
J. Maury Dove.....	952	354
Joseph T. Dyer.....	953	355
Clarence F. Norment.....	960	364
Thomas E. Waggaman	967	372

	Original.	Print
Testimony of Rebecca Parker Warner (omitted in printing)	970	—
James B. Edmonds .(omitted in printing)	975	—
Lydia M. Edmonds..(" ")	983	—
Anna Parker Warner (omitted in printing)	985	—
Geo. W. F. Swartzell (omitted in printing)	994	—
Horace S. Cummings (omitted in printing)	1001	—
Walter R. Wilcox	1004	375
Luther A. Swartzell..(omitted in printing)	1008	—
John B. Larner.....(" ")	1009	—
Holmes Conrad.....(" ")	1014	—
Ellen S. Mussey	1015	379
Helen Brooke.....(omitted in printing)	1027	—
Robert I. Fleming	1028	392
Charles McCafferty. (omitted in printing)	1034	—
Ellen S. Mussey (resumed)	1041	400
Mary Keoghan.... .(omitted in printing)	1051	—
Charles G. Sloan	1053	410
Theodore A. Harding	1055	411
Eddy B. Townsend	1063	420
John E. McLeran	1066	423
Ellen S. Mussey (resumed)	1072	430
Rachel C. Jones.....(omitted in printing)	1078	—
Thomas J. Owen	1079	437
Louis D. Wine	1084	443
Clarence B. Rheem	1133	495
Nellie Lichtenstein..(omitted in printing)	1135	—
Rachel C. Jones.....(" ")	1140	—
Andrew Parker.....(" ")	1144	—
Clarence Corson.... (" ")	1145	—
Edward H. Thomas	1146	498
Arthur A. O'Neill...(omitted in printing)	1175	—
Alexander Y. Dolfield (omitted in printing)	1176	—
Brainard H. Warner (parts omitted in printing)	1177	529
Louis W. Richardson (omitted in printing)	1229	—
T. Conrad Dodge	1230	545
Andrew Parker (recalled) (omitted in printing)	1231	—
Louis D. Wine (recalled)	1232	546
Richard M. Ham....(omitted in printing)	1233	—
Mary I. Vaughan....(" ")	1233	—
Complainant's testimony in rebuttal	1241	547
Testimony of John Joy Edson	1241	547
Defendants' testimony in surrebuttal...(omitted in printing)	1243	—
Testimony of Louis W. Richardson (" ")	1243	—
Brainard H. Warner (" ")	1244	—
Ellen S. Mussey.....(" ")	1250	—

	Original.	Print
Opinion of Justice Hagner	1251	550
Decree	1270	568
Order fixing amount of appeal bond	1270	569
Appeal bond filed	1270	569
Order extending time to file record (omitted in printing)	1271	—
Clerk's certificate (" ")	1271	—
Assignment of errors	1272	569
Designation of parts of record to be printed (omitted in printing)	1273	—
Writ of certiorari and return (omitted in printing)	1279	—
Petition to further cross-examine (" ")	1280	—
Affidavits in opposition to petition (" ")	1283	—
Clerk's certificate (" ")	1289	—
Minute entries of argument (" ")	1291	—
Opinion on first appeal	1292	570
Decree on first appeal	1297	580
Further transcript from supreme court of District of Columbia (part omitted in printing)	1298	580
Index (omitted in printing)	1299	—
Mandate from Court of Appeals	1300	580
Amendment to bill	1302	582
Answer of Warner and Wine	1303	583
Decree and reference to auditor	1305	585
Report of auditor	1306	586
Schedule with report (omitted in printing)	1307	—
Proceedings before auditor	1309	587
Exceptions of Warner and Wine to auditor's report	1310	588
Replication	1311	589
Order overruling exceptions and confirming report	1311	589
Order for severance on appeal	1312	590
Memorandum as to proof of publication	1312	590
Citation and service	1315	592
Directions for preparation of record on appeal	1315	593
Stipulation as to transcript on second appeal	1316	593
Clerk's certificate	1316	594
Minute entry of submission	1317	594
Opinion on second appeal	1318	594
Decree on second appeal	1319	596
Order allowing appeal	1319	596
Bond on appeal	1320	596
Citation and service	1321	597
Clerk's certificate	1322	597
Assignment of errors	1323	598
Designation by appellants of parts of record to be printed	1327	599
Designation by appellee of parts of record to be printed	1332	601

1 In the Court of Appeals of the District of Columbia.

LILY ALYS GODFREY, Appellant,
vs.
STEPHEN A. DUTTON, CORA M. DUTTON, His Wife; Frederick M. Czaki, Mary Alice Godfrey, Louis Wine Richardson, Brainard H. Warner, and Louis D. Wine. } No. 892.

Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } No. 17631. In Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Original Bill.

Filed Sep. 1, 1896.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON, CORA M. DUTTON, His Wife; Louis W. Richardson, Fred M. Czaki, and Mary Alice Godfrey. } In Equity. No. 17631.

To the honorable justice of the supreme court of the District of Columbia, holding a special term in equity:

The bill of complaint of Lily Alys Godfrey respectfully represents unto this honorable court as follows:

1. That she is a citizen of the United States and a resident of the city, county, and State of New York, and brings this suit in her own right as the owner of certain hereinafter-described real estate.

2. That the defendants Stephen A. Dutton and Cora M. Dutton, his wife; Fred M. Czaki and Mary Alice Godfrey are residents of the city, county, and State of New York, and the defendant Louis W. Richardson is a resident of the town of Hyattsville, State of Maryland; that the defendants Stephen A. Dutton and Louis
2 W. Richardson and Fred M. Czaki are sued in their own right in respect to the real estate hereinafter mentioned, as hereinafter set out, and the defendant Cora M. Dutton is sued as the wife of Stephen A. Dutton in respect to any supposed interest which she may have in said real estate, and the defendant Mary Alice

Godfrey is sued as the former owner of record, but in reality the holder in equity, of the title of your complainant to the hereinafter-described real estate.

3. That by deed made May 28th, 1886, and recorded June 17th of the same year, from Frank W. Berry and Mary U. Berry, his wife, to Mary Alice Godfrey Belt, trustee, lots 1 and 66, in A. P. Fardon and others' subdivision of square numbered 134, in the city of Washington, District of Columbia, were conveyed to the said grantee in trust for your complainant in and upon certain trusts in said deed set out, and, among others, the following, to wit:

"That the said party of the second part shall convey to the said Lily Alys Godfrey, or to such person as she may direct when she shall attain the age of twenty-one years, by a good and sufficient deed in fee-simple, all the interest in the hereinbefore-described premises that shall remain in her, the said party of the second part."

That the said deed is recorded in Liber 1188, at folio 166, of the land records of the District of Columbia, and a reference to the same is hereby prayed, and that the same may be read as a part hereof; that your complainant was born the twenty-seventh day of July, A. D. 1871.

4. That Mary U. Berry died on or about the 29th day of December, A. D. 1888, seized and possessed of lots 2 and 3, in A. P. Fardon and others' subdivision of square 134, and lot 40, in Page and others' subdivision of square 92, all being situated in the city of Washington and District of Columbia; that the said decedent left her surviving as her only next of kin and heirs-at-law Horace Macauley, Lilly E. Willis, and Mary Alice Godfrey; that the said Horace Macauley and Lilly E. Willis, by deeds, recorded in Liber 1504, folios 289 and 290, and in Liber 1638, folios 177 and 179, quit-claimed all their interest in the above-described real estate to the said Mary Alice Godfrey; that all of the deeds in this paragraph mentioned are duly recorded among the land records of the District of Columbia, and reference to the same, as hereinbefore given, is hereby prayed, and that they may be read as a part hereof; that before certain matters and things hereinafter set out the said Mary Alice Godfrey had by gift conveyed to your complainant all her right, title, and interest in and to the property mentioned in this paragraph, although she had failed to execute any deed or other acknowledgment of the said conveyance.

5. That prior to the circumstances and occurrences hereinafter set out and in accordance with the powers and rights entrusted to the said defendant, Mary Alice Godfrey, a deed of trust had been executed on or about the 25th day of November, A. D. 1895, and recorded on the 26th day of November of the same year, by Mary Alice Godfrey, formerly Belt, trustee under the deed in trust
3 set out in the third paragraph of this bill, and by your complainant as the beneficiary named therein, to J. Roberts Foulke and J. Barton Townsend, of the city of Philadelphia, State of Pennsylvania, to secure the Provident Life and Trust Company in the sum of ten thousand dollars, the property so conveyed being

lots 1 and 66, in Fardon's subdivision of square 134, as hereinbefore set out, and a reference to said deed, in Liber 2076, folio 183, of the land records of the District of Columbia, is hereby prayed, and that the same may be read as a part hereof; that by deed of trust from Mary Alice Belt to Edward J. Stellwagen and Frederick B. McGuire, dated December 10th, 1891, and recorded December 14th of the same year, lot 2, in square 134, was conveyed to the said trustees to secure Thomas M. Gale in the sum of three thousand five hundred dollars, and a reference to said deed of trust, in Liber 1647, folio 13, of the land records of the District of Columbia, is hereby prayed, and that the same may be read as a part hereof; that by a further deed of trust from Mary Alice Godfrey to W. Riley Deeble and Benjamin P. Davis as joint tenants, dated and recorded the 31st day of July, A. D. 1894, lot 3, in square 134, was conveyed to secure Mary J. Baldwin in the sum of four thousand dollars, and a reference to the said deed of trust, in Liber 1948, at folio 67, one of the land records of the District of Columbia, is hereby prayed, and that the same may be read as a part hereof; that by deed of trust dated December 20th, 1893, and recorded December 26th of the same year, from Mary Alice Godfrey to Aldis B. Browne and William E. Edmonston, lot 40, in square 92, was conveyed to secure the American Security and Trust Company in the sum of eight thousand dollars, and a reference to the said deed, in Liber 1870, folio 385, one of the land records of the District of Columbia, is hereby prayed, and that the same may be read as a part hereof; that by further deed of trust, dated May 28th, 1895, and recorded May 31st, 1895, from Mary Alice Godfrey to Horace W. Carpentier and Cortland Van Rensslear, the said lot 40, in square 92, was conveyed to secure an indebtedness to the said Horace W. Carpentier of three thousand five hundred dollars, a reference to which said deed, in Liber 2011, at folio 409, one of the land records of the District of Columbia, is hereby prayed, and that the same may be read as a part hereof.

6. That on or about the 26th day of March, A. D. 1896, the defendant Stephen A. Dutton and your complainant entered into an agreement, a copy whereof is hereto annexed and marked Exhibit "A;" that the said defendant, Stephen A. Dutton, represented to your complainant that the Scott Ice and Coal Company, being that company referred to in the said exhibit, had been doing an extensive business for many years, amounting in value to several thousand dollars, and was at that particular time suffering only from a temporary lull in the business; that he, the said defendant, Stephen A. Dutton, was the owner of the entire company and of all its stock; that there were outstanding against him only three judgments, aggregating in the total eight thousand five hundred dollars, and held by only two parties, one of whom was represented
4 by the defendant Fred M. Czaki and the other by a man named Miller, none of which said judgments arose from or were involved in the business of the said coal company except as judicial liens upon the same; that the said defendant Dutton agreed to pay off these judgments in full and to deliver the lease and the business on or about the first day of May, A. D. 1896, the said de-

livery of the lease being conditioned upon the assent thereto by the lessor, one J. Sargent Cram. The said defendant further represented that the said business was profitable and the leasehold interest very valuable, and faithfully promised to fulfill all the promises and agreements entered into by him, and which were in part the consideration for the giving of the deeds hereinafter referred to; that, relying upon the promises and representations made by the said defendant, and in part fulfillment of the consideration promised by her in accordance with the terms of the said contract, your complainant requested the defendant Mary Alice Godfrey to convey lots 1 and 66, in square 134, in accordance with the trust mentioned and set out in the third paragraph of this bill, to the said defendant, Stephen A. Dutton; that your complainant further requested the said defendant, Mary Alice Godfrey, to confirm the gifts of lots 2 and 3, in square 134, and 40, in square 92; that in execution and confirmation of the deed in trust hereinbefore set out in the third paragraph of this bill and as a part consideration for the contract set out in Exhibit "A," your complainant as *cestui que trust* and the defendant Mary Alice Belt as trustee conveyed to the defendant Stephen A. Dutton lots 1 and 66, in A. P. Fardon and others' subdivision of square 134, and to the record of said deed, in Liber 2105, at folio 211, one of the land records of the District of Columbia, reference is hereby prayed, and that the same may be read as a part hereof, said conveyance being made subject to the trusts set out in the fifth paragraph of this bill; that in execution and confirmation of the gift heretofore made by the said defendant, Mary Alice Godfrey, to your complainant, the said defendant, Mary Alice Godfrey, by deed conveyed lot 2, in Fardon and others' subdivision of square 134, to the defendant Stephen A. Dutton subject to the trust set out in the fifth paragraph of this bill, and a reference to the record of said deed, in Liber 2105, at folio 215, one of the land records of the District of Columbia, is hereby prayed, and that the same may be read as a part hereof; that in further execution of the said gift the said defendant, Mary Alice Godfrey, by deed conveyed to Stephen A. Dutton lot 3, in Fardon and others' subdivision of square 134 subject to the trust set out in the fifth paragraph of this bill, and a reference to the said deed, in Liber 2105, folio 218, one of the land records of the District of Columbia, is hereby prayed, and that the same may be read as a part hereof; and that in further execution and confirmation of said gift the defendant Mary Alice Godfrey by deed conveyed lot 40, in Page and others' subdivision of square 92, to the defendant Stephen A. Dutton subject to the trusts mentioned in the fifth paragraph of this bill, and a reference to the said deed, in Liber 2105, at folio 222, one of the land records of the District of Columbia, is hereby prayed, and that the same may be read as a part hereof; that these conveyances hereinbefore in this paragraph set out were made upon the consideration and with the understanding that the said defendant, Dutton, was to procure sufficient proceeds by additional mortgage on said properties to pay off the trusts existing at the time of the transfer and secure the release of your complainant and of the defendant Mary Alice Godfrey from

any liability whatsoever upon the trusts existing on said property at the time of these transfers; and, further, with said proceeds so to be realized to pay off the judgments, amounting in the aggregate to eight thousand five hundred dollars, as hereinbefore set out, and the said defendant was to do and perform all this as a part of his agreement under the said contract, and in addition thereto was to secure the signature and consent of the said J. Sargent Cram to the assignment of the lease before your complainant or the said defendant, Mary Alice Godfrey, were to be under any obligation to transfer to him any other part or portion of the property mentioned and set out and referred to in the said contract attached hereto and marked Exhibit "A."

7. That thereafter, by deed recorded the 13th day of April, A. D. 1896, the defendant Stephen A. Dutton and the defendant Cora M. Dutton, his wife, conveyed to Louis W. Richardson lots 1, 2, 3, and 66, in Fardon and others' subdivision of square 134, subject to the trusts on said lot set out in the fifth paragraph of this bill, and a reference to the record of said deed, in Liber 2116, at folio 232, is hereby prayed, and that the same may be read as a part hereof. Your complainant on information and belief alleges that the said defendant, Louis W. Richardson, parted with no valuable consideration for the conveyance of these lots in the said deed mentioned, but believes, and therefore avers, that he is not an innocent holder for value, but, on the contrary, has no interest, legal or equitable, in the said property; and your complainant believes, and therefore charges and avers, that the said transaction between the defendants Stephen A. Dutton and Cora M. Dutton and the defendant Louis W. Richardson was without consideration, and that the said deed is fraudulent and should be set aside.

8. That the defendant Stephen A. Dutton, by power of attorney dated the 15th day of April, A. D. 1896, authorized the defendant Fred M. Czaki "to consummate the negotiations for the procuring of the balance of a certain loan obtained for me on my property in the city of Washington, District of Columbia, and known as lot No. 40, block 92, in said city, and to receive the balance of said loan so to be made, said balance being the sum of twenty thousand dollars," and a reference to the record of said power of attorney, in Liber 2096, at folio 452, is hereby prayed, and that the same may be read as a part hereof; and your complainant further on information and belief avers that the said power of attorney to the said defendant, Czaki, was without consideration, and that the loan therein mentioned has not been consummated, and that the said defendant, Czaki, was not entitled to the proceeds of said loan for the reason that all of the deeds to the said defendant, Stephen A. Dutton,

6 from this complainant or from the defendant Mary Alice Godfrey were obtained fraudulently and in violation of contract rights and without consideration, and are such matters as should by a court of equity be considered, and by the decree of the said court remedy be given to your complainant by the setting aside of said conveyance and by declaring the title to the property mentioned in said deeds to be and remain still in your complainant.

9. That the defendant Mary Alice Godfrey is the mother of your complainant, and further your complainant has one brother, Macaulay S. Godfrey; that of the property hereinbefore set out, situated in the city of Washington, District of Columbia, lots 2 and 3, in square 134, are unimproved; lots 1 and 66, in square 134, are improved by a brick building some fifteen years old, which yields an income of forty-five dollars per month, which is wholly incommensurate with the expenses connected with the taxes and interest on the deed of trust placed upon said lots; that the lot 40, in square 92, is leased for a term of three years at the nominal rental of ninety dollars per month, so that the total income to your complainant from all of this property being inadequately improved was not reasonable nor at all commensurate with the total valuation of the property or the amount of capital reasonably invested in the same; that the prospects to be realized from the coal business, as represented by the defendant Stephen A. Dutton, promised much larger returns for the money invested, and, further, would afford a business occupation for your complainant's brother which would bring him a reasonable, regular, and valuable return for services rendered, and, further, that said property offered by the defendant Dutton in exchange being so located in the city of New York that there were attendant upon it valuable dock franchises, your complainant verily believed that from the rental of the same there would be returned to her as income from her investment revenue much in excess of that previously received from the Washington property; that these considerations, to wit, increased revenue to herself and business occupation, reputation, and opportunity for her brother, were largely instrumental in inducing her to enter into the contract hereinbefore mentioned with the said defendant, Stephen A. Dutton.

10. That the said defendant, Stephen A. Dutton, has wholly failed and neglected to carry out any portion of the covenants or conditions agreed upon by him to be performed as set out in the contract marked Exhibit "A," which is attached to this bill; that, on the contrary, instead of paying off the judgments outstanding against him to the amount of eight thousand five hundred dollars, and instead of transferring the lease and fulfilling the stipulations and conditions of the said contract, the said Dutton has wholly and completely failed to carry out the same in any particular whatsoever; said judgments are unpaid and there is now pending against the said Dutton, in the supreme court of the State of New York, a suit wherein a receiver of his property has been appointed and an injunction has been issued restraining him from disposing of, in any manner, his property, and that he has not carried
7 out and cannot carry out, in any manner whatsoever, his agreement contained in the said contract hereunto annexed as Exhibit "A;" said Dutton has wholly and completely failed to carry out the same in any particular whatsoever; that said judgments have not been paid and still remain unpaid, except, as your complainant is informed and believes, one of said judgments, to the amount of some three thousand five hundred dollars, held by the defendant Czaki, has been paid in part, and, further, that at no time

from the initiation of the negotiations which culminated in the contract attached hereto and marked Exhibit "A" up to the present time has the defendant Dutton been able at any time to carry out any of the provisions of the contract or stipulations entered into by him, inasmuch as at the time of the said negotiations and prior to the date of said contract and on the date of said contract and at all times subsequent thereto the said defendant, Dutton, has been under injunction in suits entered against him in the supreme court of the State of New York, in which said suits receivers of his property had been appointed by the court, and injunctions had been issued against him restraining him from disposing of or conveying in any manner any part or portion of his property, and restraining him from in any manner whatsoever disposing of any portion of his personal estate or satisfying or paying in any manner whatsoever any judgments which might be outstanding as liens against him or against his property, or from conducting or transacting in any manner whatsoever any portion or part of his business; that your complainant further on information and belief avers that the records of judgments in the city of New York alone show that there are outstanding against said defendant, Stephen A. Dutton, judgments in the aggregate of twenty thousand dollars or more, and your complainant on information and belief avers and charges that at the time of the making of the said contract annexed hereto and marked Exhibit "A" said judgments to this large amount were then outstanding, and the representations of the said defendant, Stephen A. Dutton, as to the amount of judgments against him were wholly and absolutely false, and that said statements were made by him when known to be false, and made for the purpose of deceiving and misrepresenting to this complainant the condition of his business affairs, and inducing your complainant to enter into this agreement and contract with him, and to part with her property without consideration for the transfer of the same; that the said defendant has not and by reason of the facts in this paragraph set out is wholly unable to carry out in any manner whatsoever his agreement entered into and contained in the said contract annexed hereto and marked Exhibit "A."

11. Your complainant on information and belief further avers that the said defendant, Stephen A. Dutton, has been twice indicted in the criminal courts of the State of New York for fraudulent transactions with other parties, and that said indictments are now pending against him in the said courts; and your complainant further of her own knowledge charges and avers that there
8 is now pending against the said defendant, Stephen A. Dutton, in the criminal courts of the State of New York an indictment for false pretences in connection with the very transactions and matters set out in this bill, and that the said defendant is under arrest and confined in the Tombs because of the service of the warrant against him issued in the said criminal case.

12. Your complainant further charges and avers that notwithstanding all the matters and things heretofore set out in this bill, and notwithstanding every reasonable effort on her part during the

time intervening since the date of the contract and up to the present time to obtain from the said Dutton a settlement in reference to the said property, and notwithstanding an offer on the part of your complainant to accept a transfer from the said defendant, Dutton, and the defendant Richardson of the property hereinbefore set out in this bill in full satisfaction of all claims and demands against him, the said defendant, Dutton, has wholly neglected and refused in any manner whatsoever to complete the contract entered into by him, and, further, has wholly neglected and refused and does still neglect and refuse to make any amends whatsoever for the fraud committed upon your complainant, and that your complainant, although entitled in law and equity to the possession of her property, is without remedy to obtain possession of the same, except through the intervention of this honorable court.

Wherefore, the premises considered, your complainant prays:

First. That the writ of subpœna of this honorable court may issue against each of the defendants, Stephen A. Dutton, Cora M. Dutton, Louis W. Richardson, Fred M. Czaki, and Mary Alice Godfrey, commanding them to appear and answer by a day certain the exigencies of this bill.

Second. That an order of this honorable court may be passed restraining and enjoining each of the said defendants, Stephen A. Dutton, Cora M. Dutton, Louis W. Richardson, Fred M. Czaki, and Mary Alice Godfrey, from conveying or transferring in any manner whatsoever any right, title, or interest which they may have or claim to have in the property mentioned in this bill or any of the same.

Third. That by decree of this honorable court the title to the property described in the third and fourth paragraphs of this bill may be decreed and established to be in your complainant, subject only to the legal and lawful trusts placed thereon, as set out in the fifth paragraph of this bill.

Fourth. And that your complainant may have such other and further relief as the court, the premises considered, may deem necessary and proper; and, as in duty bound, your complainant will ever pray.

The defendants to this bill are Stephen A. Dutton, Cora M. Dutton, Louis W. Richardson, Fred M. Czaki, and Mary Alice Godfrey.

LILY ALYS GODFREY,
Complainant.

HENRY WISE GERNATT,
Solicitor for Complainant.

9 DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read or heard read the foregoing bill by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true, and those stated upon information and belief I believe to be true.

LILY ALYS GODFREY.

Subscribed and sworn to before me this first day of September, A. D. 1896.

[SEAL.] RUTLEDGE WILLSON,
Notary Public.

This agreement made and entered into this 26th day of March, 1896, by and between Stephen A. Dutton of the city, county and State of New York, party of the first part, and Lily Alys Godfrey, of the same place, party of the second part, witnesseth as follows:

Whereas the said party of the first part is the owner of certain personal property consisting of a stock of goods, wares and merchandises, fixtures, machinery, tools, wagons, &c., all of which are at present located in and upon a certain piece or parcel of land known and described as lot No. 21, block No. 1761, section 6 as shown on the land map of the city of New York, and holds a lease of the said premises, together with the buildings erected thereon, upon which said lease there is now an unexpired term of twenty (20) years dating from the 1st day of February, 1896, together with a privilege of a renewal of the term of said lease upon the termination of said present lease for the space of twenty-one (21) years thereafter and next succeeding thereto, and

Whereas the said party of the second part is the owner of certain land and real estate situated in the city of Washington, District of Columbia, upon which there are certain encumberances, and other valuable properties elsewhere located, free and clear, and

H. G. A., notary.

Whereas the said party of the first part is desirous of selling said personal property and lease to said party of the second part in exchange for the real estate aforesaid, and

Whereas the lease aforesaid contains a covenant that the said party of the first part hereto (the lessee therein named) shall not assign said lease nor underlet the premises therein named without the written consent of the lessor therein named, and

Whereas such lessor is at present absent from the city, county and State of New York, and such consent cannot be obtained until his return, and

Whereas the parties hereto desire that the business now being carried on by said party of the first part shall be continued by said party of the second part, her heirs, administrators, and assigns upon the land and premises in the city of New York aforesaid,

Now these presents witnesseth that for and in consideration of the premises and of the sum of one ($1.00) dollar, by each to the other in hand paid the parties hereto do hereby agree as follows, viz:

The said party of the first part hereby bargains, sells assigns, transfers and sets over unto said party of the second part all and singular the personal property, goods, wares and merchandises, fixtures, tools, machinery, &c., now owned by him for the purpose of carrying on the business of buying and selling coal, and whatsoever incident thereto, not including the ice plant or business therein con-

H. G. A., notary.

tained now situated in and upon the land and premises known as lot No. 21, block 1761, section 6 as shown on the land map of the city of New York, and in the buildings thereon erected, together with the good will of said business and the lease of said lands and buildings thereon for the unexpired term thereof, subject however to three judgments aggregating the sum of $8,500.66 entered on December 24th, 1895, and February 11th, and 28th, 1896, with interest and costs from said dates.

To have and to hold the same and all of the same unto said party of the second part, her executors, administrators and assigns forever.

The said party of the second part, for and in consideration of the premises, hereby grants and conveys unto said party of the first part certain lands and real estate situate in the city of Washington, District of Columbia, and more particularly mentioned and described in a certain deed or deeds thereof duly made and executed by said party of the second part to the said party of the first part on the 26th day of March, 1896, and other valuable properties elsewhere located.

H. G. A., notary.

To have and to hold the same as therein described and subject to the encumbrances therein mentioned.

The said party of the first part hereby agrees that within a reasonable period after the return of the lessor in the aforesaid lease mentioned to the city, county and State of New York, he will obtain and procure the consent of the said lessor in writing to the assignment of the lease aforesaid and that in the meantime, and until the procuring of such consent said party of the second part shall and may peaceably hold, use and occupy said lot No. 21, block 1761, section 6 aforesaid for the purpose of carrying on the business of buying and selling coal, and whatsoever incident thereto, as heretofore conducted therein by the said party of the first part, as the agent and manager of said demised premises for said party of the first part hereto, and that such agency shall terminate upon such consent being obtained, and thereafter said party of the second part shall be the tenant thereof under an assignment thereof from said party of the first part to said party of the second part hereto.

In case said party of the first part hereto shall be unable to procure the consent of said lessor to such assignment of said lease then said party of the second part shall, during the continuance of said lease, be and remain the agent and manager of said party of the first part hereto with respect to the use and occupancy of said demised premises, but nothing herein contained shall in any way lessen or diminish the title of the said party of the second part to the full and complete ownership of the personal property, goods, wares and chattels hereby sold to her or any part thereof.

11

In witness whereof the parties hereto have hereunto set their hands and seals at the city of New York the day and year first above written.

S. A. DUTTON. [L. S.]
LILY ALYS GODFREY. [L. S.]

In the presence of—
HERBERT G. ANDREWS.
ELIZABETH K. HARDING.

CITY AND COUNTY OF NEW YORK, *ss:*

On this 26th day of March, 1896, before me personally appeared Stephen A. Dutton and Lily Alys Godfrey, the parties to the within instrument, to me known and known to me to be the persons described in and who executed the foregoing instrument, and they acknowledged to me that they executed the same.

HERBERT G. ANDREWS,
Notary Public, New York County.

I hereby consent to the execution of the within instrument, waiving any and all right, title, or interest that I have or might have in and to the within-described premises.

Dated New York, March 26th, 1896.

CORA M. DUTTON.

Signed in presence of—
HERBERT G. ANDREWS.

Answer of Defendant Louis W. Richardson.

Filed December 1, 1896. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY, Complainant,
vs.
STEPHEN A. DUTTON ET AL., Defendant. } Equity. No. 17631.

To the supreme court of the District of Columbia:

The answer of the defendant Louis W. Richardson to the bill of complaint of Lily Alys Godfrey exhibited against him and others in this cause respectfully shows to the court:

1 & 2. This defendant admits that he is a resident of the town of Hyattsville, State of Maryland, but as to the others matters contained in the 1st and 2d paragraphs of said bill this defendant has no knowledge, and if the same be material he demands strict proof thereof.

12 3, 4, and 5. This defendant has no knowledge of the several matters contained in said paragraphs or the condition of the title to the said property except as hereinafter explained.

6. Answering the 6th paragraph of said bill, this defendant says that he never had any knowledge, either directly or indirectly, himself, nor did his agents hereinafter mentioned ever have any knowledge, of the matters and things set forth in said paragraph; and this defendant further says that neither himself or his agents ever had any information or notice of any kind before the commencement of this suit of any of the said matters; and this defendant says that he never knew, nor did his agents know nor did any of them ever have any intimation, even prior to this suit, of the said Exhibit "A" or of any transactions between the complainant and the said Dutton or between any of the parties named in said paragraph.

This defendant requires strict proof of the allegations of the 6th paragraph of said bill.

7. Answering the 7th paragraph of said bill, this defendant says that the said Stephen A. Dutton and his wife, Cora M. Dutton, conveyed to him by deed in fee-simple lots 1, 2, 3, and 66, in Fardon and others' subdivision of square 134, subject to three certain deeds of trust, dated respectively December 10th, 1891 (for $3,500), July 31st, 1894 (for $4,000), and November 25th, 1895 (for $10,000), and that the said deed was recorded on the 13th day of April, A. D. 1896, in the land records of the District of Columbia, in Liber 2116, at folio 232 *et seq.*

This defendant denies the allegations of said paragraph that he parted with no valuable consideration for said lots; that he is not an innocent holder for value, and that he has no interest, legal or equitable, in said property. This defendant denies that allegation of said paragraph that the transaction between said Stephen A. Dutton and Cora M. Dutton and this defendant was without consideration and said deed fraudulent.

This defendant says that each of said allegations are wholly false and untrue; that he is an innocent purchaser of said property in good faith for a valuable consideration and without notice of any equity, either actual or pretended, of the complainant in the premises, and without notice, knowledge, or information that there existed, either morally or legally, any fact which operated against the right of said Dutton and wife to make said deed to him.

This defendant, further answering, says that he made said purchase through B. H. Warner & Co., real-estate brokers; that about the 10th day of April, 1896, Ellen C. Mussey, a member of the bar of this honorable court in good standing, acting for and on behalf of the said Stephen A. Dutton, offered the said real estate to his said agents for sale at and for the sum of twenty-five thousand ($25,000) dollars; that the said attorney and said Stephen A. Dutton represented to said agents that the said Stephen A. Dutton was then *bona fide* owner of said property, and desired to sell the same and realize upon the equity therein in order to use the proceeds to redeem certain valuable securities belonging to him held as
13 collateral. Nothing was said or intimated by said Dutton or his attorney in reference to the complainant or any transaction whatever with her. This defendant, through his said agents, believing the said representation and that the said Stephen A. Dutton was the actual owner of the said property which he proposed to sell, thereupon entered into the contract a copy of which is herewith filed, marked Exhibit L. W. R. No. 1, and is prayed to be considered a part hereof.

This said contract was signed, sealed, and delivered by this defendant and said Stephen A. Dutton, and said Dutton's signature was witnessed by his said attorney.

Thereupon this defendant, in order to be informed whether the title of said Stephen A. Dutton to said real estate was good, caused an examination of the said title to be made by the Columbia Title Insurance Company, which company on the 13th day of April, 1896,

furnished accordingly a certificate, a copy of which is hereto attached, marked Exhibit L. W. R. No. 2, and prayed to be considered a part hereof.

Upon the report of the said Columbia Title Insurance Company that the title to said property was good in said defendant, Stephen A. Dutton, the said firm of B. H. Warner & Co., for and on behalf of the defendant, in good faith, in the usual course of business, relying upon Exhibit L. W. R. No. 2 (the said certificate of title), deposited seven thousand and eighty-six dollars and thirty-three cents ($7,086.33), being the cash payment, less taxes and interest of the purchase-money, with said title company.

The said Columbia Title Insurance Company, after deducting, by and with the consent and agreement of the said Stephen A. Dutton, the proportionate amount of taxes on said property and interest on the said deeds of trust to the 10th day of April, 1896, acting in good faith and in the usual course of business, paid over to the said Stephen A. Dutton and disbursed upon his order the entire balance of the said purchase-money so deposited with it for this defendant, to wit, seven thousand and eighty-six dollars and thirty-three cents ($7,086.33), which, together with the said taxes, interest, and incumbrances on said property assumed by this defendant, made up the full — adequate *and* consideration of twenty-five thousand ($25,000) dollars, the purchase price of said property, in accordance with said Exhibit L. W. R. No. 1, hereto attached, and the said defendant, Stephen A. Dutton, acting for himself and his said wife, at the same time made, executed, and delivered said deed in fee-simple to this defendant. A copy of said deed is hereto attached, marked Exhibit L. W. R. No. 3.

This defendant states and avers that the said consideration was *bona fide* and truly paid, and previous thereto and at the time of the paying of said money and delivery of said deed to this defendant, this defendant did not, nor did the said firm of B. H. Warner & Co. nor any of its members, nor did the said Columbia Title Insurance Company, have any knowledge or notice of the equities of the complainant set forth in said bill, and they did not nor did any of them have any knowledge or notice, either directly or in-
14 directly, of any circumstances referred to in said bill or otherwise from which any notice of complainant's rights or equities or claims in the premises could be inferred.

This defendant, further answering, says that upon the delivery of the said deed conveying said property to him, as aforesaid, the possession thereof was given to this defendant, through his said agents, B. H. Warner & Co., with the knowledge and consent of the complainant, without any objection being made thereto and without any claim of right therein on part of the complainant, since which time the complainant has not been in possession of said property so conveyed, as aforesaid, to this defendant, and was not in possession thereof at the time of the filing of the bill in this cause. This defendant prays that he may have the same protection of his title from this answer as though he had set forth his said defense by way of plea.

8. This defendant has no knowledge or information and never had any knowledge or information respecting the allegations of the 8th paragraph of said bill, and if the same be material this defendant demands strict proof thereof.

9. The defendant admits that lots 2 and 3, in square 134, are unimproved, and that lots 1 and 66, in said square 134, are improved by a brick building, but the rent thereof is twenty-five ($25) dollars per month instead of forty-five ($45) dollars per month, as alleged by complainant. As to the other matters contained in said 9th paragraph of said bill, this defendant never has had in any manner, either directly or indirectly, constructively or otherwise, any knowledge or notice thereof except from the said bill, and if the same be material this defendant demands strict proof thereof.

10 and 11. Answering the 10th and 11th paragraphs of said bill, this defendant says that except from the allegations of said bill, this defendant has not and never has had, either directly or indirectly, constructively or otherwise, any knowledge or notice whatsoever of any of the matters and things set forth in said paragraphs, and if the same be material, this defendant demands strict proof thereof.

12. Answering the 12th paragraph of said bill, this defendant says that he has no knowledge or information respecting the allegations thereof and demands strict proof of the same, if anywise the said matters be material to this defendant. This defendant, further answering, says that no offer on part of complainant to accept a transfer from this defendant of said property was ever made or communicated to this defendant or his said agents. On the contrary, this defendant says that after the delivery of the deed to him, as aforesaid, by the said defendant, Stephen A. Dutton, the complainant, through her mother and agent, ratified the said deed. On the 17th day of April, 1896, the keys to the said improved property were in the possession of the complainant's mother, with whom complainant then resided, in the city of New York, State of New York, and thereupon the said B. H. Warner & Co., acting for and on behalf of this defendant, wrote and duly mailed and posted a
15 letter to complainant's mother (who received the same in due course of mail), of which the following is a copy, to wit:

APRIL 17TH, 1896.

Mrs. Mary A. Godfrey, 287 West 70th St., New York city, N. Y.

DEAR MADAM: A client of ours has recently purchased premises known as 1801 Q St. N. W., this city, from Mr. Dutton. We called on Gen. Robertson, who has had charge of the property, for the keys this morning and he informed us that he had, at your request, returned the same to you. We will be very much obliged to you if you would forward the same to us by mail or by *by* express at our expense.

Very truly yours, B. H. WARNER & CO.

And thereupon, the 18th day of April, 1896, in response to the above letter, the said complainant's mother, for and on behalf of

complainant, sent and delivered said keys to said B. H. Warner & Co., agents of this defendant, and accompanied the same by a letter, of which the following is a copy, to wit:

B. H. Warner & Co.

DEAR SIRS: Please find enclosed key to the house 1801 Q St. N. W.

Yours very truly, M. A. GODFREY,
287 W. 70th St., Corner West End Ave., New York.

April 18th, '96.

And, having fully answered, this defendant prays to be hence dismissed with his costs in this behalf most wrongfully sustained.

E. H. THOMAS,
Solicitor for Defendant.

DISTRICT OF COLUMBIA, *ss:*

Louis W. Richardson, being duly sworn, deposes and says that he has read the above answer by him subscribed and knows the contents thereof; that the matters and things therein stated on his personal knowledge are true, and the matters and things therein stated on information and belief he believes to be true.

LOUIS W. RICHARDSON.

Subscribed and sworn to before me this 30th day of November, 1896.

HENRY J. GROSS,
[SEAL.] *Notary Public.*

16 EXHIBITS L. W. R. Nos. 1, 2, 3.

Filed Dec. 1, 1896.

The Columbia Title Insurance Company.

Case No. 19811.

In consideration of — dollars paid by —— —— to the Columbia Title Insurance Company of the District of Columbia, the said company doth hereby certify that there appears of record at this date no unreleased or unexpired trusts, mortgages, leases, unsatisfied builders' liens, judgments, or decrees and no pending suits at law or equity in anywise charging or affecting the title to the land described in the annexed certificate of title signed by W. E. Edmonston and dated April 13th, 1896, to wit, lots one (1), two (2), three (3), and sixty-six (66), in A. P. Fardon and others' subdivision of square one hundred and thirty-four (134), as said subdivision is recorded in the office of the surveyor of the District of Columbia, in Book R. W., page 5, except such as are specifically noted in said certificate of title.

This certificate is issued to —— ——, and is for — benefit only.

Witness the corporate seal and the signatures respectively of the president and secretary of the said company this thirteenth day of April, 1896.

W. E. EDMONSTON, *President.*

J. D. COUGHLAN, *Secretary.*

(Here follows diagram marked p. 28½.)

Case No. 19811.

Certificate of Title.

APRIL 13, 1896.

Lots one (1), two (2), three (3), and sixty-six (66), in A. P. Fardon and others' subdivision of square one hundred and thirty-four (134), as said subdivision is recorded in the office of the surveyor of the District of Columbia, in Book R. W., page 5.

I have examined the title to the above-described property, and the same as it appears of record is in my opinion good in Louis W. Richardson, subject to unpaid taxes and assessments, if any, as to which the assessor of the District of Columbia will certify and subject to the three deeds of trust below noted on the several parts of caption by said deeds of trust respectively conveyed.

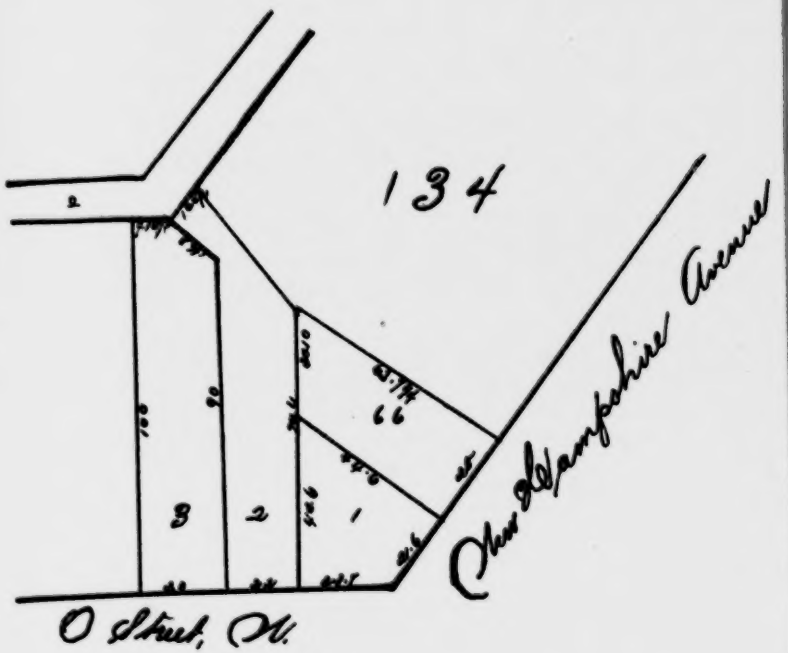
17 Mary Alice Godfrey (formerly Belt), trustee; Lily Alys Godfrey, beneficiary named in said deed in trust, to J. Roberts Foulke, J. Barton Townsend.

Deed of trust dated November 25, 1895; recorded November 26, 1895, Liber 2076, folio 183.

Conveys lots 1 and 66 of caption, being same property conveyed by the hereinbefore-mentioned deed in trust, and which land said Mary Alice Godfrey hereby conveyed at request of said Lily Alys Godfrey; which request is evidenced by the latter signing and sealing these presents and becoming a party hereto.

Said Mary Alice Godfrey trustee under deed in trust recorded in Liber 1188, folio 166.

To secure the Provident Life and Trust Company of Philadelphia $10,000, note of Lily Alys Godfrey of even date, payable to order of said company five years after date, with interest at 6% per annum until paid, payable semi-annually; principal and interest payable in lawful gold-coined money of the United States of America of the standard of weight and fineness established by laws of said United States in force on January 1, 1891, at office of said company, in Philadelphia, Pennsylvania, with privilege of paying principal of said note at any time after one year from date hereof by paying, in addition to said principal, interest thereon and interest in advance to and including the instalment of interest due in November next following the date of such payment.



No. 892
Godfrey
v
Dultmeyer
} P. 28 1/2

Mary Alice Belt
to
Edward J. Stellwagen, Frederick B. McGuire.

Deed of trust dated December 10, 1891; recorded December 14, 1891, Liber 1647, folio 13.

Lot 2, Fardon and others' subdivision.

To secure Thomas M. Gale $3,500.00 note of even date of said Mary Alice Belt; payable in three years, with interest at 6% per annum until paid; payable semi-annually.

Mary Alice Godfrey, unmarried, formerly Mary Alice Belt,
to
W. Riley Deeble, Benjamin P. Davis.

Deed of trust dated July 31, 1894; recorded July 31, 1894, Liber 1948, folio 67.

Lot 3, Fardon and others' subdivision. Same lot which by deed recorded in Liber 1321, folio 467, was conveyed to Mary U. Berry, who, according to recital in Liber 1503, folio 243, is deceased, leaving grantor and Horace Macauley and Lily E. Willis her heirs-at-law.

To secure the full and punctual payment of two notes of even date, in the sum of $2,000, each made and signed by Mary Alice Godfrey and payable to the order of Mary F. Baldwin at three
18 years, with interest at 6% per annum, payable semi-annually; also to secure costs and expenses, including counsel fees of any litigation that may arise in respect of this trust.

W. E. EDMONSTON.

April 13th, 1896.

This indenture, made this thirteenth day of April, in the year of our Lord one thousand eight hundred and ninety-six by and between Stephen A. Dutton and Cora M. Dutton, his wife, of the city and State of New York, but temporarily in the District of Columbia, parties of the first part, and Louis W. Richardson, of Hyattsville, in the State of Maryland, part- of the second part:

Witnesseth, that the said part- of the first part, for and in consideration of the sum of ten dollars, in lawful money of the United States, to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, and sell, alien, enfeoff, release and convey unto the said party of the second part, his heirs and assigns, forever, the following-described real estate situate in the city of Washington, in the District of Columbia to wit: all — certain piece or parcel of land and premises known and distinguished as and being:

Lots numbered one (1), two (2), three (3) and sixty-six (66) in A. P. Fardon and others' subdivision of square numbered one hundred and thirty-four (134) as said subdivision is recorded in the office of the surveyor, of the District of Columbia, in Book R. W.

page 5, said lots being hereby conveyed, subject to three certain deeds of trust recorded among the land records of the District of Columbia, one of said deeds of trust being on the said lots one (1) and sixty-six (66) and being recorded in Liber No. 2076 folio 183 and securing payment of the principal debt of $10,000 with interest thereon—another of said deeds of trust being on said lot two (2) and being recorded in Liber No. 1647 folio 13, and securing the payment of the principal debt of $3,500 with interest thereon, and the other of said deeds of trust being on said lot three (3) and being recorded in Liber No. 1948 folio 67 and securing the payment of the principal debt of $4,000 with interest thereon, to which deeds of trust reference is here made for a more particular description of the debts thereby intended to be secured.

Together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said parties of the first part, of, in, to, or out of the said piece- or parcel- of land and premises:

To have and to hold the said pieces or parcels of land and premises, with the appurtenances, into the said party of the second part, his heirs and assigns, forever.

19 And the said Stephen A. Dutton, his heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that they the said parties of the first part, and their heirs shall and will warrant and forever defend the said piece- or parcel- of land and premises and appurtenances, unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through —.

And further, that the said parties of the first part further covenant, promise and agree, to and with the said party of the second part, that they, the said parties of the first part, and their heirs, shall and will at any and at all times hereafter, upon the request and at the cost of the said part- of the second part, his heirs or assigns, make, execute, deliver, and acknowledge all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances, unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or his or their counsel learned in law shall advise, devise, or require.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

STEPHEN A. DUTTON. [SEAL.]
CORA M. DUTTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
ELLEN S. MUSSEY.

DISTRICT OF COLUMBIA, *ss:*

I, John D. Coughlan, a notary public in and for the District aforesaid, do hereby certify that Stephen A. Dutton and Cora M. Dutton, his wife, parties to a certain deed bearing date on the 13th day of April, A. D. 1896, and hereunto annexed, personally appeared before me, in the District aforesaid, the said Stephen A. Dutton and Cora M. Dutton, his wife, being personally well known to me to be the person- who executed the said deed, and acknowledged the same to be their act and deed; and the said Cora M. Dutton, wife of Stephen A. Dutton, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this 13th day of April, A. D. 1896.

[SEAL.] J. D. COUGHLAN,
Notary Public.

(Endorsed:) Deed. From Stephen A. Dutton *et ux.*, Cora M. Dutton, to Louis W. Richardson. Received for record on the
20 13th day of April, A. D. 1896, at 2.47 o'clock p. m., and recorded in Liber No. 2116, folio 232 *et seq.*, one of the land records of the District of Columbia. C. H. Taylor, recorder. B. H. Warner. G. W. F. Swartzell. L. D. Wine. C. B. Rheem. B. H. Warner & Co., real-estate brokers, 916 F street northwest, Washington, D. C.

EXHIBIT "L. W. R. No. 1."

Filed Dec. 1, 1896. J. R. Young, Clerk.

Brainard H. Warner. Louis D. Wine.
Geo. W. F. Swartzell. Clarence B. Rheem.

Office of B. H. Warner & Co., 916 F St. N. W., Washington, D. C.

Articles of agreement, made and entered into this 10th day of April, A. D. one thousand eight hundred and ninety-six, by and between —— ——, party of the first part, and Louis W. Richardson, party of the second part, in manner and form following: The said party of the first part in consideration of the sum of five hundred (500) dollars to *their* agents, B. H. Warner & Co., duly paid as a deposit, the receipt whereof is hereby acknowledged, hereby agree- to sell unto the party of the second part, the following-described real estate in the city of Washington and District of Columbia: Lots 66, 1, 2 & 3 square 134 Wash. D. C.

For the sum of twenty-five thousand (25,000) dollars which the said party of the second part agrees to pay to the said party of the first part as follows:

Seventy-five hundred (7,500) cash, balance seventeen thousand five hundred (17,500) to be assumed secured by deed of trust on the

said described property, with interest at the rate of six per cent. per annum, payable — which am't is now upon the property and secured by a trust or trusts and the said party of the first part, on receiving such payment at the time and in the manner above mentioned, shall execute, acknowledge and deliver to the said party of the second part, or to his heirs or assigns, a special warranty deed and conveyance, assuring to them the fee-simple of the said premises free from all encumbrances except as to the trust referred to above which deed shall contain the usual full covenants. The terms of sale to be complied with in five days from the date hereof, and said deposit to be applied in part payment of the purchase of the said described real estate. Title to be good and marketable or deposit returned.

And it is understood that the stipulations aforesaid shall apply to and bind the heirs, executors, administrators, and assigns of the respective parties.

21 In witness whereof the parties to these presents have hereunto set their hands and seals the above day and date.

(Signed) S. A. DUTTON. [SEAL.]
(Signed) L. W. RICHARDSON. [SEAL.]

True copy.
HENRY J. GROSS,
Notary Public.
Nov. 17, 1896.

Signed, sealed, and delivered in the presence of—
(Signed) ELLEN S. MUSSEY,
As to S. A. Dutton.
(Signed) C. B. RHEEM,
As to L. W. Richardson.

Decree, &c.

Filed Mar. 29, 1897.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } In Equity. No. 17631.

This cause coming on to be heard on the bill and order *pro confesso*, passed herein on the 17th day of February, A. D. 1897, against the defendants Stephen A. Dutton, Cora M. Dutton, and Fred M. Czaki, and it appearing to the court that the defendant Mary A. Godfrey, by the signature of her counsel at the foot of this decree, consents to the passing of the same, and that the defendant Louis W. Richardson has had due notice of the intention of the complainant to present this decree to the court for its signature, which fact is evidenced by the notice of the same filed in this cause and signed by his counsel of record, and being considered by the court, it is, this

29th day of March, A. D. 1897, by the court and by the authority thereof, adjudged, ordered, and decreed that as to the property described in the bill of complaint herein as lot forty (40), in Page and others' subdivision of square ninety-two (92), being premises number 1706 Connecticut avenue northwest, in the city of Washington, District of Columbia, the said order *pro confesso* against the defendants Stephen A. Dutton, Cora M. Dutton, and Fred M. Czaki be, and the same is hereby, made final, and the bill and the allegations thereof as to the said defendants be, and the same are hereby, taken as and for confessed.

And it is further adjudged, ordered, and decreed that as to the aforesaid property described in the bill of complaint herein as lot forty (40), in Page and others' subdivision of square ninety-two (92), being premises number 1706 Connecticut avenue northwest, in the city of Washington, District of Columbia, all the title, legal
22 and equitable, in and to the said premises be, and the same is hereby, decreed and established to be in Lily Alys Godfrey, the complainant in the above-entitled cause, subject only to the debts secured by deeds of trust on the said property, which said deeds of trust are more specifically set out in the 5th paragraph of the said bill filed herein.

And it is further adjudged, ordered, and decreed that the defendants Stephen A. Dutton, Cora M. Dutton, Fred. M. Czaki, and Mary A. Godfrey be, and they are hereby, ordered and directed to make conveyance of said lot forty (40), in said square ninety-two (92), by good and sufficient deed in law unto and to the complainant, Lily Alys Godfrey, and if the said parties defendant, Stephen A. Dutton, Cora M. Dutton, Fred. M. Czaki, and Mary A. Godfrey, shall neglect or refuse to comply with this decree on or before the 5th day of April, A. D. 1897, then this decree shall stand, be considered and taken in all courts of law and equity to have the same operation and effect as if a conveyance had been executed conformably herewith.

And it is further adjudged, ordered, and decreed that as to the property described in the bill of complaint filed herein as lots one (1), two (2), three (3), and sixty-six (66), in A. P. Fardon and others' subdivision of square one hundred and thirty-four (134), in the city of Washington, District of Columbia, the said cause be, and the same is hereby, retained by this court, with leave to the complainant to proceed therein as she may be advised by counsel, in accordance with the order passed in this cause on the 17th day of March, A. D. 1897.

By the court:

W. S. COX,
Associate Justice.

I consent.
CORCORAN THOM,
Sol'r for Def't Mary A. Godfrey.

(Endorsed:) Order giving complainant final decree for 1706 Conn. Ave.

Memorandum.

February 16, 1897.—Leave to complainant to file amended bill.

Amendment of Bill.

Filed May 1, 1897.

In the Supreme Court of the District of Columbia.

LILYS ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } In Equity. No. 17631.

Now comes the complainant in the above-entitled cause, and after leave of the court first had and obtained files the following as her amendment to the original bill filed herein:

23 1. That the said bill be amended by making Brainard H. Warner and Louis D. Wine parties defendant.

2. By adding to the 7th paragraph of the said bill the following allegations:

"That the said Richardson was only a nominal party to the said transaction; the real parties were the said Dutton, on the one part, and Brainard H. Warner and Louis D. Wine, on the other; that the said Wine and Warner pretend that they advanced or furnished to the said Dutton the sum of six thousand five hundred and eighty-six and $\frac{33}{100}$ ($6,586.33) dollars, and took from the said Dutton the said conveyance to the said Richardson to secure the repayment of the said sum so claimed to have been advanced. Whether said Warner and Wine actually furnished said Dutton such sum or any sum whatsoever the complainant cannot affirm or deny and demands strict proof in that behalf, and she avers that the said Warner and Wine had such notice of the frauds of the said Dutton as herein set forth and of such facts and circumstances as put them on inquiry as to the conveyance to said Dutton, that in equity they should have no benefit from said conveyance to said Richardson, but the same should be decreed to be cancelled and held for naught."

LILY ALYS GODFREY.

J. M. WILSON,
HENRY P. BLAIR,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, *ss:*

I, Lily Alys Godfrey, being first duly sworn, do on oath depose and say that I have read the aforegoing amendment by me subscribed and know the contents thereof; that the facts therein stated of my personal knowledge are true, and those stated upon information and belief I believe to be true.

LILY ALYS GODFREY.

Subscribed and sworn to before me this 30th day of April, A. D. 1897.

[SEAL.] CORCORAN THOM,
Notary Public, D. C.

(Endorsed:) Let this amendment be filed as ordered by the court. W. S. Cox, justice.

(Endorsed:) Copy of amendment to bill.

Memorandum.

July 16, 1897.—Leave to complainant to further amend bill.

24 *Amended and Supplemental Bill, with Interrogatories.*

Filed Jul- 17, 1897.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY *vs.* STEPHEN A. DUTTON, CORA M. DUTTON, His Wife; Frederick M. Czaki, Mary Alice Godfrey, Louis Wine Richardson, Brainard H. Warner, and Louis D. Wine.	In Equity. No. 17631.

To the honorable justice of the supreme court of the District of Columbia holding the equity term of said court:

The complainant, Lily Alys Godfrey, with leave of the court first had and obtained, brings this her amended and supplemental bill against the above-named defendants, and thereupon respectfully shows as follows:

1. That she is a citizen of the United States, commorant in the city, county, and State of New York, and brings this suit in her own right.

2. That defendants Stephen A. Dutton, Cora M. Dutton, Frederick M. Czaki, and Mary Alice Godfrey (who is the mother of this complainant) are citizens of the United States, commorant in the said city and State of New York, and are sued, the said Stephen A. Dutton and the said Czaki, in their own right, and said Cora M. Dutton as the wife of the said Stephen, and the said Mary Alice Godfrey in her own right and as trustee, as hereinafter set forth; that defendants Louis Wine Richardson, Brainard H. Warner, and Louis D. Wine are citizens of the United States, commorant in the District of Columbia, and are sued in their own right.

3. That by deed dated the 28th day of May, A. D. 1886, one Frank W. Berry and Mary U. Berry, his wife, conveyed lots numbered one (1) and sixty-six (66), in A. P. Fardon and others' subdivision of square numbered one hundred and thirty-four (134), in the city of Washington, District of Columbia, to Mary Alice Godfrey Belt, the former name of defendant Mary Alice Godfrey, as trustee, in trust for the sole use and benefit of this complainant and with full power

of alienation in any way that said trustee might deem beneficial to this complainant, and in trust and with power to convey the absolute ownership thereof to this complainant upon her arriving at the age of twenty-one years; and this complainant shows that, although she has attained said age, the said trustee has not executed the power created in and by said deed in trust to convey to this complainant the legal title to said lots.

That the said Mary U. Berry (the grandmother of this complainant) departed this life on or about the 29th day of December, A. D. 1888, seized and possessed of lots numbered two (2) and three (3), in said subdivision of said square numbered one hundred
25 and thirty-four (134), and lot forty (40), in Page and others' subdivision of square numbered ninety-two (92), in said city and District; that the said deceased left her surviving as her sole heirs-at-law three daughters, to wit, Horace Macaulay, Lilly E. Willis, and the said Mary A. Godfrey; that the said Horace Macaulay and Lilly E. Willis subsequently, to wit, prior to the year 1895, quitclaimed all their interest in the said lots numbered two (2) and three (3) and said lot numbered forty (40), to the said Mary Alice Godfrey by deeds duly recorded among the land records for the District of Columbia; that subsequently, to wit, on or about the fall of 1895, the said Mary A. Godfrey gave the said lots two (2) and three (3), in square one hundred and thirty-four (134), and lot forty (40), in square ninety-two (92), to this complainant, but did not at the time execute any formal deed or other conveyance, but that she did formally execute said gift on or about the 26th day of March, A. D. 1896, by executing and delivering certain deeds to defendant Dutton, hereinafter mentioned, which deeds were made and executed upon the direction and at the request of this complainant.

4. That heretofore, to wit, on or about the 14th day of December, 1891, the said Mary A. Godfrey, by her then name of Mary A. Belt, conveyed said lot two (2), in square one hundred and thirty-four (134), to trustees to secure the payment of a certain note for $3,500, made and signed by said Mary A. Belt and payable three years after date.

That on or about the 20th day of December, 1893, the said Mary A. Godfrey conveyed said lot forty (40), square ninety-two (92), to other trustees in trust to secure the payment of a certain note for $8,000, made and signed by the said Mary A. Godfrey and payable three years after date; that on or about the 31st day of July, 1894, the said Mary A. Godfrey conveyed said lot three (3), square one hundred and thirty-four (134), to other trustees in trust to secure the payment of two certain notes for $2,000 each, made and signed by the said Mary A. Godfrey and payable three years after date.

That on or about the 28th day of May, 1895, the said Mary A. Godfrey conveyed said lot forty (40), in square ninety-two (92), to other trustees in trust to secure the payment of a certain note for $3,500, made and signed by the said Mary A. Godfrey and payable eighteen (18) months after date.

And that by a certain other deed of trust dated the 25th day of

November, 1895, the said Mary A. Godfrey, this complainant joining with her therein, conveyed said lots one (1) and sixty-six (66), in said square one hundred and thirty-four (134), to other trustees in trust to secure the payment of a certain note for $10,000, made and signed by this complainant and payable five years after date. That all of said notes so made and signed are valid and subsisting liens upon the respective pieces or parcels of real estate so as aforesaid conveyed in trust to secure their payment, and from the date they were so made and signed, all the time, have been and are valid and subsisting personal obligations of their respective makers,

26 to wit, of the said Mary A. Godfrey, to an aggregate of $19,000, and of this complainant for said note of $10,000, upon which last-mentioned note a six months' instalment of interest, amounting to $300, fell due on the 25th day of May, 1897, and the same is now unpaid and in arrear; that an instalment of interest, amounting to $120, upon said two notes of $2,000 each will fall due on the 31st of July, 1897, and some provision for its payment must be made.

That said lots one (1) and sixty-six (66) are improved by a brick dwelling-house from which this complainant formerly received rent at the rate of an average of fifty (50) dollars per month.

5. That heretofore, to wit, prior to the month of March, 1896, the said lots one (1), two (2), three (3), and sixty-six (66), in square one hundred and thirty-four (134), had been put in the hands of B. H. Warner & Co., a firm or partnership doing business in the city of Washington, in said District, as real-estate agents and brokers, of which firm said defendants Warner and Wine, were and are members, by the said Mary A. Godfrey, with the full consent and approval of this complainant, for sale at and for the sum of $55,000, and the said B. H. Warner & Co., as the agents so constituted of this complainant, then and there undertook and agreed to use their best endeavors to procure a purchaser for said lots at the said price for a commission by way of compensation to be paid by this complainant out of the purchase-money of said lots if a sale were effected; that subsequent to the date when the said B. H. Warner & Co. were so employed the said Mary A. Godfrey from time to time received from said firm letters or other communications relating to the said property and to their said employment as agents, and, among other things, inquiring in effect if said lots should be inserted and continued in the sales bulletins of said firm as and for sale at the said price, to which letters and communications the said Mary A. Godfrey, with the full knowledge of this complainant, replied, directing and requesting that efforts be continued by said firm to find a purchaser for said lots at said price, and no contrary request or direction was ever at any time given by this complainant or the said Mary A. Godfrey to the said B. H. Warner & Co., so that, as this complainant is advised, the said firm remained and continued her agents to sell said lots at said price on the 10th day of April, 1896; and this complainant on information and belief charges and avers and offers to prove that on the said 10th day of April, 1896, the said lots were entered on the books of said firm as for sale

at and for the said price of $55,000, and that on said books the said Mary A. Godfrey or this complainant appeared as the owner of said lots.

6. That on or about the 26th day of March, A. D. 1896, the defendant Stephen A. Dutton and this complainant entered into an agreement in writing, a copy whereof is filed herein, marked "Exhibit A," which it is prayed may be read at the hearing of this cause and taken and considered a part hereof; that at and prior to the execution of said agreement, and as an inducement thereto, the said Stephen A. Dutton falsely and fraudulently represented to this complainant as follows:

27 *a.* That the Scott Ice and Coal Company, being the company referred to in said agreement, was then doing a good and extensive business, amounting in the aggregate to many thousands of dollars yearly, and was in good financial condition, despite the temporary lull then existing in business generally, and had been doing for many years a flourishing business.

b. That he, said Dutton, was virtually the said company and the owner of all the capital stock thereof.

c. That no judgments were outstanding against him, the said Dutton, except three small judgments recovered in the courts of the State of New York, which did not in the aggregate exceed the sum of $8,500, none of which said judgments had been recovered in any cause of action against said company, nor did they involve in any way the business or property of the same.

d. That furthermore the said Dutton, on the day the said agreement was signed, promised and agreed that he would immediately, and not later than the following day, pay and satisfy the said judgments.

e. That although no time was mentioned in said agreement at which possession should be given of said property or business of said company, the said Dutton at the time the said agreement was signed agreed to put this complainant in possession of said property on or about the first day of May, then next ensuing, it being necessary, before said transaction could be consummated in all its details, to obtain the assent of one J. Sargent Cram, then temporarily in Europe, the lessor of said Dutton of the dock and wharf property upon which the said company was doing business, which assent the said Dutton undertook to procure.

f. That the said Dutton further represented that the said business was then exceedingly profitable and the said leasehold interest very valuable, and that he was also the owner of much valuable property elsewhere than in the said city of New York, and in flourishing financial circumstances, and was worth several millions of dollars, and that he would faithfully perform all the promised agreements so made by him with this complainant.

g. That at the time the said agreement was being discussed between this complainant and said Dutton the said Dutton resided in a handsome and expensive house, luxuriously furnished, number 137 W. 71st street, in the said city of New York (a few blocks from the home of this complainant's mother), which the said Dutton rep-

resented that he owned, a fact which induced this complainant to believe that his other representations in respect of his wealth and ability to perform his part of said contract (Exhibit A) were true.

That relying upon said promises and representations so made by said Dutton, and in part fulfillment of what she undertook to do in and by said agreement, this complainant on the 26th day of March, A. D. 1896, procured the conveyance to said Dutton of all of the aforementioned lots in square one hundred and thirty-four (134) and of said lot forty (40), in square ninety-two (92), by deeds which were prepared by or under the direction and at the request
28 of said Dutton (this complainant joining with the said Mary A. Godfrey in the deed to said lot sixty-six (66), in square one hundred and thirty-four (134), so, as aforesaid, held in trust by said Mary A. Godfrey for the sole use and benefit of this complainant), subject, nevertheless, to the several deeds of trust mentioned in the fifth paragraph of this bill to the said Dutton, who thereupon agreed to pay the said notes and each and every of them, so, as aforesaid, secured by the said deeds of trust, as a part consideration for said deeds, and thereby relieve this complainant and her said mother from all obligation upon or because of said notes or any of them.

That subsequently, to wit, on or about the 6th day of April, 1896, the said Dutton came to the home of this complainant, in the city of New York, in company with one Herbert G. Andrews, hereinafter mentioned, and stated that there was some defect in the acknowledgment of said deeds so, as aforesaid, executed on the 26th day of March, 1896, and thereupon other deeds were then and there presented to this complainant by said Dutton, and immediately signed and executed by this complainant and her mother, the said Mary A. Godfrey, and acknowledged before the said Andrews, as notary public, and delivered to said Dutton, this complainant being desirous of complying in all respects and with perfect good faith with all the conditions of her said agreement.

7. And this complainant further shows, as hereinbefore stated, that defendant Mary Alice Godfrey is her mother, and that this complainant has one brother, Macaulay S. Godfrey; that of the property hereinbefore set out, situated in the said city of Washington, lots two (2) and three (3), in the said square one hundred and thirty-four (134), are unimproved; that lots one (1) and sixty-six (66) are improved by a brick dwelling-house, some fifteen years old, which yielded an income of about fifty dollars a month, which is wholly incommensurate with the expenses connected with taxes and the interest on the deeds of trust now standing upon said lots; that said lot forty (40), in square ninety-two (92), was under lease for one year, with privilege of renewal from year to year for a term of three years, at the nominal rental of ninety dollars per month; so that the total income of this complainant from all of her said Washington property was not commensurate with the value of the said property or the amount of capital invested therein; that the profits to be realized from the said coal business according to the representations so, as aforesaid, made by the said Dutton promised much larger returns for the money invested, and, further, would afford a

business occupation for your complainant's said brother, which would bring him a reasonable, regular, and valuable return for services rendered; and, further, that said property offered by defendant Dutton in exchange being so located in the city of New York that there were upon it valuable dock franchises, this complainant verily believed that from the rental of the same there would have been realized to her, as income from her investment, revenue much in excess of that previously received from the Wash-
29 ington property; that these considerations, to wit, increased revenue to herself and business occupation, reputation, and opportunity for her brother, were largely instrumental in inducing her to enter into the said contract with the said Stephen A. Dutton.

8. And this complainant further charges, as hereinafter more specifically set forth and shown, that the purpose and object of said Dutton in so making said false and fraudulent representations in respect of the property agreed by him to be given her in exchange for her said property in the District of Columbia was to cheat and defraud her, this complainant, out of her said property and without any consideration therefor moving to her, and that said Dutton immediately or within a day or two after said agreement was signed, to wit, on the 29th day of March, A. D. 1896, arrived in the city of Washington for the purpose of consummating his said fraudulent design and in some way disposing of said property; that said Dutton before or shortly after his arrival entered into negotiations with said B. H. Warner & Co. or said defendants, Warner & Wine, through one Ellen S. Mussey, a lawyer of said city, to whom he applied for a loan on the security of this complainant's said property, and on information and belief this complainant charges that said Ellen S. Mussey, after bringing the matter to the attention of the said B. H. Warner & Co. or said Warner and Wine, reported to the said Dutton that a loan of from twenty-five to thirty thousand dollars could readily be negotiated on the security of the said property, and stated that if he would return the following week she would have everything in readiness to complete the transaction. Accordingly the said Dutton came again to the said city of Washington on or about the 10th day of April, then next, and, going to the office of said B. H. Warner & Co., then and there signed a paper-writing or contract agreeing to sell all of said lots in square one hundred and thirty-four at and for the grossly inadequate price of twenty-five thousand dollars, said sum being less than one-half the price or consideration at which the said B. H. Warner & Co. had been authorized to sell the said lots by the said Mary Alice Godfrey.

And this complainant is advised by counsel and believes, and so believing charges and avers, that it then and there became and was the duty of the said B. H. Warner & Co. and of defendants Warner and Wine to notify this complainant or the said Mary A. Godfrey that the said Dutton had signed said contract, and to inquire whether or not there existed any fact or circumstance why the sale of said lots at said grossly inadequate price of twenty-five thousand dollars should not be consummated, and whether the said Dutton

had honestly acquired from this complainant or her said mother said lots in good faith and for any consideration, and whether the same had been paid, in view of the fact that he was so suddenly and hastily endeavoring to immediately part with the same for a consideration so grossly inadequate as to be virtually nominal, which fact alone was sufficient to compel them, as prudent and honest business men, to make the most searching inquiry, and in this connection this complainant charges that said B. H. Warner & Co. *did not, nor did said defendants,* Warner nor Wine, nor any of them, communicate with, report to, or notify the complainant or the said Mary A. Godfrey, nor make any inquiry of them or either of them, nor disclose anything relating to the pending transaction of the said B. H. Warner & Co. or said defendants, Warner and Wine, with said Dutton, but, to the contrary thereof, purposely and intentionally concealed the fact that the said Dutton had signed the aforementioned contract to sell said lots at and for the said grossly inadequate sum of twenty-five thousand dollars and was eager and anxious to dispose immediately of said lots so soon after acquiring the same, although the said B. H. Warner & Co. and said defendants, Warner and Wine, well knew that the residence of this complainant and the said Mary A. Godfrey was 287 West 70th street, New York city, to which address previously they had frequently sent letters and other communications.

That instead of giving such notice, or making such inquiry, or giving any notice, or making any inquiry to or of this complainant or the said Mary A. Godfrey of the aforesaid efforts of said Dutton to dispose of said lots, the said defendants, Warner and Wine, immediately set about the acquisition of said lots for their own benefit, and, with a view to and for the purpose of concealing their connection with said transaction, caused the title to the said lots to be conveyed to defendant, said Louis Wine Richardson, by a pretended deed bearing date the 13th day of April, 1896, signed by defendant Stephen A. Dutton and Cora M. Dutton, his wife, and acknowledged before one John D. Coughlan, a notary public in and for the District of Columbia, and the said pretended deed was recorded among the land records of the District of Columbia on the 13th day of April, 1896, in Liber 2116, at folio 232 *et seq.*, and it is prayed that the same (a copy whereof is filed as an exhibit to the answer of said Richardson to the original bill in this cause) may be read at the hearing of this cause and taken and considered a part hereof.

And this complainant charges that at the time the said alleged contract of sale was so, as aforesaid, signed by the said Stephen A. Dutton on the 10th day of April, 1896, the deeds from this complainant and the said Mary A. Godfrey conveying said lots to him, said Dutton, had not been recorded among the said land records, a fact well known at the time to said defendants, Warner and Wine.

9. That the said Louis Wine Richardson, to whom said lots were so, as aforesaid, conveyed by the said pretended deed of April 13, 1896, is a nephew of the said defendant, Wine, and was at the time a clerk in the employ of said B. H. Warner & Co. or otherwise con-

nected in business with said firm; and this complainant is informed and believes, and so believing charges and avers and offers to prove, that the said Richardson is a young man of little or no business experience, and for that reason and because of his relationship to said Wine and his connection in business with said firm was chosen as the instrument or tool of the said defendants, Warner and Wine, for the consummation of their schemes to get possession of this complainant's said property for
31 the said grossly inadequate sum of twenty-five thousand dollars; that the said Richardson is totally without means or property of any kind, and is dependent for his support upon his small earnings as such employé and the bounty of his family, and that he did not at the time said pretended deed was executed and delivered or at any other time part with any money or anything of value as a consideration therefor, and that he has not now and never had any interest whatever, legal or equitable, in said lots, but that he is the mere naked holder of the title thereto; that any and all moneys paid to said Dutton, if any were so paid (which this complainant does not admit), as the consideration for the said pretended deed were advanced by the said defendants, Warner and Wine, and that said Warner and Wine now pretend and claim that they are the present owners of said lots, and are collecting the rents of the said dwelling-house erected on said lots one (1) and sixty-six (66).

10. That the defendant Stephen A. Dutton by an alleged certain power of attorney, dated the 15th day of April, 1896, authorized the defendant Frederick M. Czaki "to consummate the negotiations for the procuring of the balance of a certain loan obtained for me on my property in the city of Washington, District of Columbia, and known as lot numbered forty (40), block ninety-two (92), in said city, and to receive the balance of said loan so to be made, said balance being the sum of twenty thousand dollars," as will more fully appear on reference had to said power of attorney duly recorded among the land records of the District of Columbia.

And your complainant shows that she has no knowledge or information with regard to the said proposed negotiation or loan further than as hereinbefore set forth, but shows that heretofore, to wit, by decree passed in this cause on or about the 29th day of March, 1897, the said Stephen A. Dutton, Cora M. Dutton, Frederick M. Czaki, and Mary A. Godfrey were ordered and directed to make conveyance of said lot forty (40), in square ninety-two (92), to this complainant, and upon their neglect or failure so to do by or before the 5th day of April, 1897, then that said decree should stand, be considered, and taken in all courts of law and equity to have the same operation and effect as if a conveyance had been executed conformably therewith.

11. That at and prior to the time the said agreement of date the 26th day of March, 1896, being Exhibit A, hereinbefore referred to, was entered into between this complainant and the said defendant, Dutton, as this complainant has since learned, though not until several months later, the said defendant, Dutton, was insolvent, wholly unable to pay his debts, and that there were outstanding

against him at the time in the city of New York judgments largely in excess of the $8,500 aforesaid, upon one of which said judgments, after proper proceedings had and taken against said Dutton by said Czaki, a receiver was appointed on the 7th day of March, 1896, by the supreme court of the State of New York of all the property, real and personal, of every description of the said Dutton, and expressly
32 specifying his leasehold interest in the said wharf or dock property and all of his right, title, and interest in the said Scott Ice and Coal Company, and that he was then, to wit, on the 26th day of March, 1896, under an injunction of said court restraining him from disposing of any property belonging to him; that one of said judgments was represented by defendant Czaki, a lawyer then doing business in said city of New York, who came to Washington with said Dutton on the 9th day of April, 1896, to assist him in disposing of this complainant's said property and to collect the said judgment out of the proceeds of such disposal, the said Czaki being then fully advised and informed of the inability of the said Dutton to comply with the terms of his said agreement with this complainant of date March 26, 1896, and of his fraudulent dealings with her, and conniving with said Dutton by fraud and co-operation to carry out the said fraudulent schemes; that because of said receivership and said injunction and said judgments and his total insolvency the said Dutton was not able to comply in any particular with his said agreement of date the 26th day of March, A. D. 1896, but therein made default, and this complainant has never received any consideration whatever for the conveyance to the said Dutton of her said property in Washington.

And this complainant further shows that subsequently, to wit, on the 28th day of August, 1896, the said Dutton was indicted by the grand jury of the county of New York for the felony of falsely and fraudulently obtaining the signature of this complainant to said agreement of date March 26, 1896, being Exhibit A, hereinbefore mentioned, and was thereafter duly arraigned and tried on said indictment before a judge and jury in the court of general sessions, in the city of New York, and convicted of said felony, and sentenced to serve a term of imprisonment in the State prison at Sing Sing, in the said State of New York, where he is at present serving out said sentence.

And that defendant Czaki thereafter, to wit, on the 24th day of June, 1897, was indicted for felony by the grand jury of the said county of New York for complicity with said Dutton in his fraudulent practices on this complainant, and is now awaiting trial on his said indictment for said felony.

And this complainant further shows that she is young and inexperienced, and fully relied upon and implicitly believed the representations made to her by said Dutton in respect of the said wharf and dock property and the business of said ice and coal company and of his financial responsibility, and never doubted or suspected in any way his perfect good faith; and upon the recommendation to her by said Dutton of his lawyers, Pierson and said Herbert G. Andrews, of said city of New York, to represent her in the transaction, and who,

said Dutton stated to her, were able, honest and reliable, and moderate in their charges, she consented to accept them as her legal advisers in the matter; and the said Pierson and Andrews, pretending to act in her behalf, advised this complainant that the said Dutton's title to the property proposed by him to be given in exchange was good, and prepared the said agreement filed herein as
33 Exhibit A, which they or the said Andrews presented to this complainant for her signature, and the said agreement was thereupon signed by this complainant in the presence of said Andrews, and acknowledged before him as a notary public; and this complainant also shows that she had full confidence at the time in the professional standing and business integrity of the said Pierson and Andrews, and did not, therefore, consult any other lawyer or person in connection with said transaction until long afterwards, when she had reason to suspect that a fraud had been perpetrated on her.

12. The complainant further charges that she has made demand upon defendant Richardson for the reconveyance to her of said property, to wit, lots one (1), two (2), three (3), and sixty-six (66), square one hundred and thirty-four (134), in said city of Washington, but the said Richardson persistently neglects and refuses so to do, and your complainant, though entitled in law and equity to the possession and enjoyment of her said property, is without remedy to obtain possession of the same except through the intervention of this honorable court.

And to the end that said defendants, Warner and Wine, may, if they can, show why this complainant should not have the relief prayed, and may upon their several and respective corporate oaths and according to the best and utmost of their knowledge, remembrance, information, and belief full, true, direct, and perfect answers make to such of the several interrogatories herein set forth and numbered consecutively from one (1) to forty-nine (49) as by the note hereunder written they are respectively required to answer, and forasmuch as this complainant is without remedy in the premises save in this honorable court, where such matters are properly cognizable, she therefore prays:

1. That the said Stephen A. Dutton, Cora M. Dutton, his wife; Frederick M. Czaki, Mary Alice Godfrey, Louis Wine Richardson, Brainard H. Warner, and Louis D. Wine may be made parties defendant to this amended and supplemental bill and required to answer the exigencies thereof by a day certain to be fixed by an order of this court.

2. That the deeds of this complainant and the said Mary A. Godfrey, conveying the title to said lots one (1), two (2), three (3), and sixty-six (66), square one hundred and thirty-four (134), in the bill mentioned to Stephen A. Dutton, and the deed from said Dutton and wife, conveying said title to Louis Wine Richardson, be set aside, vacated, and for nothing held, and that said title may be held to be in this complainant and the said Mary A. Godfrey, subject only to the trusts placed thereon as set out in the fifth paragraph of the bill of complaint.

3. That pending the final adjudication of the matters and things herein mentioned a receiver may be appointed to collect the rentals of said dwelling-house standing upon said lots one (1) and sixty-six (66), and hold the same subject to the order of this honorable court.

4. That said defendants, Brainard H. Warner, Louis D.
34 Wine, and Louis Wine Richardson, may be required to account to this honorable court for all rents received from said dwelling-house since said 13th day of April, 1896.

5. That pending the final decree in this cause the said Louis Wine Richardson may be restrained and enjoined from conveying or transferring, in any matter whatsoever, any right, title, or interest which he may have or claim to have in said lots by virtue of said pretended deed from said Dutton so as aforesaid purporting to convey the title to him.

6. That this complainant may have such other and further relief as to the court may seem necessary and proper.

And the complainant will ever pray, etc.

LILY ALYS GODFREY.

SAM'L MADDOX,
Solicitor for Complainant.

DISTRICT OF COLUMBIA, *To wit:*

Before me, the undersigned, personally appeared Lily Alys Godfrey, who, being first duly sworn according to law, deposes and says:

I have read over the foregoing amended and supplemental bill by me subscribed and know the contents thereof. The matters and things therein stated as of my personal knowledge are true, and the matters and things therein stated on information and belief I believe to be true.

LILY ALYS GODFREY.

Subscribed and sworn to before me this 16th day of July, A. D. 1897.

J. R. YOUNG, *Cl'k,*
By R. J. MEIGS, JR., *Ass't Cl'k.*

Interrogatories to be Answered by Defendants Brainard H. Warner and Louis D. Wine, Answering Separately.

1. State when and where you first met Stephen A. Dutton and by whom he was introduced to you.

2. Had you known of him before such meeting? and, if so, state all you know of his character and reputation.

3. State fully whether you did not know of him in connection with what is known as the Blodgett claim to certain real estate in the city of Washington and in connection with the promotion in Washington of one or more title and trust companies.

4. What business dealings, if any, have you ever had with said Dutton?

5. State fully what inquiry, if any, was ever made by you in regard to said Dutton, mentioning the name of such person or persons of whom you made inquiry, and what you said to them and what they said to you, giving also the dates of such conversations.

6. What was your first knowledge of said Dutton in connection with conveyances to or from him of lots 1, 2, 3, and 66, square 134, Washington, D. C.?

7. State fully all you know, and if other persons were present when you acquired such knowledge or information give their names.

8. Do you know Ellen S. Mussey, of the city of Washington, D. C.?

9. State how long you have known her and whether you have had business transactions with her; and, if so, how many and how frequently.

10. State also whether or not you came into business relations with said Mussey in connection with said Dutton and said aforementioned lots.

11. State who was present and mention how many interviews were had with said Mussey in connection with said lots. State what was said and done at each of said interviews and in whose office the same were held.

12. Were you present at the time the said Dutton signed an agreement to sell the said lots, of date April 10, 1896, an alleged copy whereof is filed as an exhibit to the answer herein of said Richardson to the original bill?

13. If you were present, state at whose office it was and whether or not the name of the said Richardson was inserted in said agreement at the time it was so signed by the said Dutton, or was it inserted subsequently to such signing.

14. If you were present, mention the names of all persons who were present at that time.

15. Who employed the Columbia Title Company of the District of Columbia to examine the records and certify as to the title to said lots?

16. If yourself, or, if you were present, mention when this was done, with what officer or employé of said title company the conversation which was had at that time took place, what was said to him and what he said, and whether any request was made to make haste in such search and report or make the case "special."

17. Were you present at the signing by said Dutton of the deed of said lots, on or about the 13th of April, 1896? If so, give the names of all other persons who were present; state at whose office the signing took place and where and in whose office the deed was acknowledged.

18. Do you know whether or not Cora M. Dutton, the wife of said Stephen A. Dutton, was present in Washington on the 10th day of April, 1896? and state whether or not she was sent for specially to come on to Washington from New York at that time to sign and acknowledge said deed.

19. State who acted as the brokers in said transaction on behalf of Stephen A. Dutton.

20. If, in response to the last interrogatory, you answer B. H. Warner and Co., state which member or members of said firm conducted the negotiations.

21. If any brokerage was charged and paid, state the
36 amount and to which partner or employé of said firm the same was paid, and, if by check, produce the same; if you cannot, then state by whom said check was drawn and on what bank and to whom the same was made payable and how the same was indorsed.

22. At the time of the execution of said deed by said Dutton, to wit, on or about April 13, 1896, was not Louis W. Richardson a clerk in the office of said B. H. Warner and Co., or in their employ or connected in business with them?

23. Is not said Louis W. Richardson a nephew of Louis D. Wine, one of the partners in the firm of B. H. Warner and Co.?

24. If said Louis W. Richardson was in the employ of B. H. Warner and Co. at the time of said conveyance, state what compensation, if any, he was paid for his work.

25. Did Louis W. Richardson pay any part of the alleged consideration paid said Dutton for the conveyance of said lots?

26. Was said Louis W. Richardson present when said contract of April 10th was signed?

27. State, if you know it, the age of said Louis W. Richardson.

28. Is not said Louis W. Richardson, to your knowledge, wholly dependent for his support upon his earnings or the bounty of his family, and did he not reside at that time at Hyattsville, under his father's roof? If not, state where he resided.

29. If said Louis W. Richardson paid any part of said consideration money for said lots, state if he did so by check drawn by himself, and mention the name of the bank upon which said check was drawn, the amount of the check, and to whose order it was payable.

30. If not by check but by cash, state to whom said cash was paid, who was present at the time, the amount so paid, and from what source, if you know, he obtained said cash.

31. State whether or not, since said conveyance was made, any rents have been received out of said property by the firm of B. H. Warner and Co., the amount so collected, and to whose credit upon the books of said firm the payments of such rent were entered.

32. Did you not at or about the time of this transaction make or endorse a note which was negotiated in one of the banks or trust companies of the city of Washington and the proceeds thereof turned over to the Columbia Title Insurance Company for the purpose of paying the consideration money and other costs and expenses connected with the said transaction? If you did so make or endorse a note, state the amount of it and by what bank or trust company it was discounted, and what other persons, if any, were parties thereto.

33. Prior to the said 13th of April, 1896, how long had the said

property been on the books of B. H. Warner and Co. as for sale and at what price?

34. At whose instance was the said property so put upon the said books for sale?

35. Is it not a fact that the money paid or advanced to Dutton in consideration of the execution of the said conveyance of
37 said lots was obtained by negotiation of the note of Louis D. Wine, endorsed by B. H. Warner? If so, produce said note.

36. Did not Louis W. Richardson merely act as a nominal party in said transaction without having any beneficial interest in said lots and without paying any part of the said money so advanced to said Dutton out of his own pocket?

37. Was not an agreement relating to the said lots executed by Louis W. Richardson at or about the time of the execution of said deed by Dutton to Richardson?

38. Was not said agreement a defeasance agreement whereby the said Richardson agreed to reconvey said lots? If not, state what the purport of said agreement was.

39. State who was present at the time said Richardson signed said agreement.

40. Is said agreement in your possession or under your control? And, if so, produce and file a copy thereof as part of the answer to this interrogatory.

41. If said agreement is not in your possession or under your control, state where it is, if you know. If you do not know, state where you last saw it and what has become of it. If destroyed, state, if you know, why it was destroyed.

42. Has the house located upon said lots 1 and 66 been occupied since the 13th of April, 1896, by Louis D. Wine or any of the members of the family of Louis D. Wine?

43. If yea, mention the names of the person or persons who so occupied the same, and how long they so occupied it, and whether they paid any rent to said Richardson; how much, when, in whose presence, whether by check or cash. (If by check, to whose order said check was made payable, and by whom said check was drawn.)

44. State whether you sought any information before entering into said transaction on behalf of yourself or of said Richardson from Miss Godfrey or her mother.

45. Did you not know that Miss Godfrey and her mother were always firm in demanding and adhering to the price of $55,000 for said lots?

46. Do you know Frederic M. Czaki? If yea, state when and where you first met him.

47. Did you not know that said Czaki accompanied Dutton to Washington to receive from him payment of a judgment obtained against Dutton represented by said Czaki, as attorney?

48. State when and where you first held any conversation with said Czaki referring to said lots or said transaction, and who was present and what he said to you and what you said to him.

49. State what other conversations, if any, you had subsequently

with said Czaki, the purport thereof, and where the same were held.

SAM'L MADDOX,
Of Counsel for Complainant.

38 Filed August 17, 1897. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } No. 17631. Equity Doc. 41.

The joint and several answer of the defendants Brainard H. Warner and Louis D. Wine to the amended and supplemental bill of complaint respectfully shows to the court as follows:

1, 2. They admit the residences of the parties to the suit to be set forth in the 1st and 2nd paragraphs of the bill.

3. These defendants have no personal knowledge of any of the matters and things set forth in the 3rd paragraph of the bill, but call for proof thereof in so far as may be material, and except in so far as such allegations relate to matters of record in the land records of the District of Columbia. They are advised by the record in this cause, viz., by the original bill therein, that the trusts upon which lots one and sixty-six, in square No. 134, were conveyed to Mary Alys Godfrey Belt were not simply to convey to complainant upon her arriving at the age of twenty-one years, as is alleged in said amended and supplemental bill, but to "convey to the said Lily Alys Godfrey or to such person as she may direct when she shall attain the age of twenty-one years;" which trust, they aver, was fully and regularly executed by the conveyance of the said property, *inter alia*, to the defendant Stephen A. Dutton, as set forth in said 3rd paragraph of said bill. These defendants are advised and believe, and therefore aver, that the allegations of the said 3rd paragraph of the bill show no title in the complainant to lots two and three, in said square 134, and that she is without standing in any court to maintain any suit in respect to said lots, and these defendants pray the same benefit hereof as to the said lots two and three as if they had specifically demurred to the bill.

4. They believe the allegations of the 4th paragraph of said bill to be correct as to the encumbrances upon the property in said square 134, with which alone these defendants are concerned, though they have no personal or other knowledge respecting the same other than such as is afforded by the land records of the District of Columbia, nor have they any personal knowledge of the average rental of the dwelling-house located on lots one and sixty-six, in said square, as set forth in said paragraph, but call for strict proof thereof, if material. The six months' installment of interest, amounting to $300.00, which fell due on the 25th day of May, 1897, referred to in said paragraph, is not unpaid and in arrear, as alleged, but was promptly paid by these defendants, the beneficial purchasers of the property upon

which the same was secured under the conveyance from the defendant Dutton, set forth in said bill.

5. With regard to the allegations of the 5th paragraph of the bill that lots one, two, three, and sixty-six, in square 134, had been put in the hands of B. H. Warner & Co., for sale, and that said
39 firm were the agents of the complainant, these defendants say that the facts are as follows:

About October, 1893, the defendant Mary A. Godfrey informed said firm that she would sell the said lots for $55,000.00, and would pay the said firm a commission if they could find a purchaser at that price, whereupon the said property was placed upon the sales bulletin of said firm, but they never at any time had any call or inquiry resulting in any offer for it, and for a considerable time prior to April, 1896, the said property had been stricken from their sales bulletin.

The said property was placed upon the books of numerous other real-estate brokers and agents, as these defendants are informed and believe, and therefore aver, in the same manner, viz., by notice that the owner would sell at the price named and pay a commission to any one who would find a purchaser at that price. These defendants never at any time had any exclusive or particular agency for the said property, nor had their sign on said property, but the same was posted by Beverly Robertson, Esq., a real-estate agent in whose hands, as they are informed and believe, and therefore aver, the said lots were placed for sale by the said Mary A. Godfrey. Both these defendants are members of the firm of B. H. Warner & Co., but the defendant Warner never had any knowledge that said property had at any time been upon the books of said firm, and had never had any personal connection therewith until a few days prior to the conveyance thereof to the defendant Richardson mentioned in the bill, nor did he have any acquaintance with or knowledge of either the complainant or the defendant Godfrey, and the defendant Wine also was unaware at the time of the agreement to purchase said property by them that it ever had been upon the books of the said firm. Said firm has for a long time done an extensive real-estate business in the District of Columbia, in the course of which many pieces of real estate are placed upon their books for sale without any employment of said firm or any of its members as agents for the owners, but simply as indicating a willingness of the owner to sell at the price stated and to pay a commission if said firm could find a purchaser at such price. The placing of the property in question upon the sales bulletin of B. H. Warner & Co. was unaccompanied by any contract by the said firm or any of its members with the said Mary A. Godfrey or any employment by her of them as her agent, while the complainant was wholly unknown to the said firm and to these defendants, either personally or as having any interest in said property.

6, 7. These defendants are wholly without any personal knowledge of the truth or falsity of the allegations of the 6th and 7th paragraphs of said bill touching the transactions between the complainant and the defendants Dutton and Godfrey, as herein set forth, and call for

strict proofs of each and all of the allegations of said paragraphs in so far as the same may be material. If said allegations or any of them are true, these defendants had no notice, knowledge, or information respecting the same, either before or at the time of the conveyance to the defendant Richardson in said bill referred
40 to, nor any cause to suspect, nor did they in fact suspect, any of the said matters and things, nor had the defendant Richardson, nor any member of the firm of B. H. Warner & Co., nor the Columbia Title & Insurance Co., which acted for these defendants and said Richardson, as hereinafter stated, any such notice, knowledge, information, suspicion, or cause for suspicion, as these defendants are informed and believe and therefore aver. On the contrary, they aver that the said conveyance to said Richardson was based upon a full and adequate valuable consideration, in the condition of the real-estate market at the time of said conveyance, which was actually paid for said property by these defendants without any knowledge, notice, or suspicion of any fraud practiced upon the complainant or any other person whomsoever.

8. These defendants are also without any personal knowledge as to the truth of the allegations of the 8th paragraph of the bill in regard to the transactions between the defendant Dutton, the defendant Godfrey, and the complainant, and call for proof thereof if material, but as to such of the allegations of the said 8th paragraph as refer to these defendants they say as follows:

On or about the 10th day of April, 1896, Mrs. Ellen Spencer Mussey, a member of the bar of this District, stated to the defendant Warner, at his office, No. 916 F St. N. W., that she had for sale the said lots in square 134, and was referred by the said Warner to the defendant Wine, said Warner being then engaged; whereupon the said Mussey stated to the defendant Wine that she was acting as the attorney for one Stephen A. Dutton, of New York, who had several judgments against him in that city which for business reasons it was important to him to satisfy immediately or be subjected to great loss, and that for this reason he desired to make an immediate sale of the said lots; that he would sell the same at $25,000.00, less a commission of three per centum; and that said Dutton had come to her with a recommendation given by a business man of high standing in New York, who had been a classmate of her deceased husband. Thereupon, after some conference between these defendants, they agreed to purchase the said property at the price named, but, as they bought it to sell again on their joint account and for their joint benefit, and as they were married men, for purposes of convenience they agreed that the title should be conveyed to the defendant Louis W. Richardson, who could convey direct to any purchaser without the trouble and possible inconvenience of requiring any conveyance thereof to be executed and acknowledged by the wives of these defendants; and, as the result of the said negotiation and agreement, the contract to sell was entered into, a copy of which is filed as a part of the answer of the defendant Richardson to the original bill herein, which contract is hereby referred to and prayed to be read as part of this

answer. The Columbia Title Insurance Co. was thereupon employed to examine the title to said lots in the usual and regular course of business, and a check made by the firm of B. H. Warner & Co. was drawn to its order and delivered to it for the sum of seven thousand and eighty-six dollars and thirty-three cents
41 ($7,086.33) on the 13th day of April, 1896, at which time the said title company completed its report, showing the title good in said Richardson. There were at that date taxes and interest against the property amounting to $413.67, and other encumbrances aggregating $17,500.00, which sums, together with the amount of said check, which last-named amount was applied by said title company to payment for said property as per the terms of the said contract of purchase from the defendant Dutton, made $25,000.00, the agreed purchase-money. The defendants refer to and make part hereof the copy of the original deed to said Richardson and of the certificate of title of said title company filed with the said answer of the defendant Richardson to the original bill. Since their said purchase these defendants have paid taxes and interest upon the property in question amounting to about $1,283.58, while the net rents collected therefrom have amounted to about $138.64 and no more. No part of said interest and taxes have been paid or tendered by the complainant or the defendant Mary A. Godfrey.

Further answering the said paragraph, these defendants deny that they caused the conveyance of the said property to be made to the defendant Richardson for any purpose of concealment, or for any other purpose than the wholly innocent one of taking the title in such manner as would enable them more readily to handle and dispose of said property than if the title were vested in themselves, and they show to the court that it is, and for many years has been, the custom of real-estate dealers in the District of Columbia to take title in this manner under similar circumstances, which custom has been and is well known throughout said District.

Further answering the said paragraph, these defendants specifically deny that they ever contracted to lend or were asked to lend $25,000.00 or any other sum upon the said property, or to negotiate a loan thereon, or that the defendant Dutton, on or about the 10th day of April, 1896, or at any other time, ever came to the office of B. H. Warner & Co., or signed then and there, or at any other time or place known to these defendants, any paper-writing or contract in relation to the said sale other than the deed of conveyance to the defendant Richardson, which deed was executed by him at the office of the Columbia Title Insurance Co., or that these defendants or either of them, purposely and intentionally or otherwise, concealed from the complainant or any other person or persons the transaction in question, or any matter or thing connected therewith, or that the firm of B. H. Warner & Co., or that the defendants Warner & Wine or either of them, knew that the residence of the complainant and defendant Godfrey was at 287 West Seventieth street, New York city, or that either of these defendants had previously sent any letters or communications to that address, or that these defendants or

either of them knew well or otherwise, at the time of entering upon the contract of sale, that the deeds from the complainant and the defendant Godfrey conveying the said lots to said Dutton had
42 not been recorded among the land records, the contrary of each and every of which allegations they aver to be true in fact.

The defendant Wine, at the time of entering into the contract and of the consummation of the said sale, never knew the fact that the complainant had any interest in the said lots or any of them, and did not recall that said property had ever been on the books of the firm of B. H. Warner & Co. for sale. The defendant Warner was wholly without acquaintance with said fact or with either the complainant or the defendant Godfrey at the time the contract of sale was entered into, but subsequently to said contract and before its consummation was informed that said property had been at one time upon the books of the firm for sale at the price of $55,000.00, and that at that time it was the property of the defendant Mary A. Godfrey, who resided at the Hotel Arno, in the city of Washington; whereupon the defendant Warner inquired concerning the said defendant, Godfrey, of sundry persons residing at said hotel or in the vicinity thereof and learned that said defendant had ceased to reside in the city of Washington, and that she had ceased to be the owner of said property, having traded it to the defendant Dutton for other property; whereupon said defendant considered it unnecessary to inquire further concerning her.

After the consummation of the sale the defendant Wine was desirous of obtaining the key to the house, and being wholly ignorant of the whereabouts of the defendant Godfrey, but finding the sign of Beverly Robertson, as agent, upon the property, he applied to said Robertson for the key and learned from him that he had surrendered said key to the defendant Godfrey, and that the address of the latter was 287 West Seventieth street, New York city; whereupon said Wine immediately wrote to the defendant Godfrey, informing her that the said property had been sold and requesting her to forward the key of the house to the firm of B. H. Warner & Co., which represented the purchaser; whereupon the defendant Godfrey, under date of April 18, 1896, promptly forwarded the key to said house to said firm, with a letter of said date, a copy whereof is herewith filed, marked "Exhibit A," and prayed to be read as part hereof.

These defendants further show to the court that, as they are informed and believe, and therefore aver, both the complainant and the defendant Godfrey were informed at or about the time of the said sale that the defendant Dutton was endeavoring to borrow money upon the said property under their said conveyance to him, and a few days later that they were further advised of the fact that he had sold and conveyed the said property outright, to which contemplated loan and to which actual sale neither the complainant nor the defendant Godfrey then made any objection whatever, but, on the contrary, continued to co-operate with the defendant Dutton in carrying out his purposes and in concealing from his creditors the true facts

in regard to their contracts and business relations with him, and that neither the complainant nor the defendant Godfrey made any objection whatever to the said sale or gave any notice of the alleged frauds practiced upon them by the said Dutton until at
43 or about the time of the filing of their original bill in this cause. These defendants are advised and believe, and therefore aver, that the conduct of the complainant and the defen*defend*ant Godfrey in thus forwarding the key after notice of the sale of the property and in acquiescing without timely objection in the efforts of the defendant Dutton to borrow money upon the said property and in his sale thereof, after actual notice to them of the said facts, and in further thereafter co-operating with him, after notice of these facts, as above set forth, refute the claim of the bill that they were misled or injured by the fact that these defendants did not notify them of said sale and estop them by their laches in omitting so to do from now asserting such claim or seeking to defeat said sale, but that it was incumbent upon them promptly to notify B. H. Warner & Co. of the alleged frauds upon them, if any such frauds were practiced, when they learned through the said letter of the defendant Wine, replied to by the defendant on April 18, 1896, as aforesaid, of the sale.

9. The defendant Louis Wine Richardson is a great-nephew of the defendant Louis D. Wine, but was not in April, 1896, in the employ of B. H. Warner & Co. or otherwise connected in business with said firm, nor was he chosen as "the instrument or tool of the defendants Warner and Wine," as alleged in the 9th paragraph of said bill, the vesting of the title in him having been for the purposes hereinbefore set forth and none other. He is a young man, the son of parents in comfortable circumstances, earning a comfortable livelihood, and not dependent for support upon the bounty of his family, as is alleged.

These defendants admit that they paid the consideration for the said conveyance to said defendant, and that they now claim, as they have always claimed, that they are the owners of the said lots.

Further answering the 9th paragraph of the bill, these defendants say that in and by her original bill the complainant set up that these defendants were mortgagees of the property in controversy, and that in and by her said amended and supplemental bill, among many other changes and departures in substance, to all of which these defendants here object and claim the same benefit as if they had specifically demurred, she sets up a new and different case to the effect that these defendants are the vendees of said property.

These defendants admit that the firm of B. H. Warner & Co. are now collecting the rents of the dwelling-house erected on said lots one and sixty-six, in said square 134, as alleged, and aver that the said house was surrendered by the defendant Godfrey, the former record owner thereof, to said firm, on the 18th day of April, 1896, as the representative of the purchaser of said property from the defendant Dutton, after express notice of the sale thereof by the said Dutton, claiming the right to make said sale under the deed from

complainant and said defendant, Godfrey, and after the complainant also knew that said Dutton had sold the said lots.

10. These defendants have no interest in lot forty, in block ninety-two, referred to in the tenth paragraph of the bill, nor in any
44 of the matters set forth in said paragraph. If the allegations of said paragraph are of any materiality as against these defendants, they demand strict proof thereof.

11. These defendants have no personal knowledge of any of the matters set forth in the 11th paragraph of said bill, and require strict proof thereof if of any materiality as against these defendants, which they deny.

12. These defendants on information and belief deny that any demand was made on the defendant Richardson, as therein claimed, until after the commencement of this suit, when an effort was made, through threats, to force and compel the said defendant to convey said property to the complainant without the knowledge or consent of these defendants or of his own counsel. They deny that the complainant is entitled to possession and enjoyment of the said property, but aver that, if so entitled, then, as they are advised and believe, the complainant has an adequate and complete remedy at law, and they claim the same benefit thereof as if they had demurred to the bill.

13. Further answering, these defendants say that they are purchasers in good faith, for a valuable consideration, of the said lots one, two, three, and sixty-six, in square 134, from the defendant Stephen A. Dutton, who was the record owner of the said lots under deeds executed and delivered to him by the complainant and the defendant Mary A. Godfrey for the express purpose of vesting the title thereof, absolutely and unconditionally, in him, and that they purchased and paid for the same without any knowledge, information, notice, or suspicion of any infirmity, legal, equitable, or otherwise, in the title of the said Dutton to the said property, or in his right to sell and convey the same and receive the purchase-money therefor.

And, having fully answered, they pray to be hence dismissed with their reasonable costs.

BRAINARD H. WARNER.
LOUIS D. WINE.

J. J. DARLINGTON,
Sol'r for Def'ts Warner & Wine.
E. H. THOMAS,
Sol'r for said Defendants.

DISTRICT OF COLUMBIA, *ss:*

I, Brainard H. Warner, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof; that the matters and things therein set forth as of my own personal knowledge are true, and that those set forth on information and belief I believe to be true.

BRAINARD H. WARNER.

Subscribed and sworn to before me this 14th day of August, A. D. 1897.

[SEAL.] S. A. TERRY,
Notary Public.

45 DISTRICT OF COLUMBIA, *ss:*

I, Louis D. Wine, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof; that the matters and things therein set forth as of my own personal knowledge are true, and those set forth on information and belief I believe to be true.

LOUIS D. WINE.

Subscribed and sworn to before me this 14 day of August, A. D. 1897.

[SEAL.] TENNEY ROSS,
Notary Public.

Answer of Defendant Warner to Interrogatories Propounded in the Amended and Supplemental Bill.

1. I never met Stephen A. Dutton, to my knowledge, in my life.
2. I never knew anything about him or his character and reputation until after the purchase of the property mentioned in these proceedings.
3. I never knew he had anything to do with the "Blodgett claim," or any other real estate, or any title and trust companies in Washington.
4. I never had any business dealings with the said Stephen A. Dutton at all, or any one representing him, to the best of my knowledge and belief, except as hereinbefore stated.
5. I remember Mrs. Mussey stated when she came to my office that she wanted to sell the property referred to for a client who was introduced to her by one of her husband's friends, and I refer to my answer to said bill hereto annexed as a part of my answer to this interrogatory.
6. My first knowledge of said Dutton was in connection with lots 1, 2, 3, and 66, square 134, Washington, D. C., as hereinbefore explained and as more particularly stated in my said answer.
7. Mr. Wine and Mrs. Mussey were the only persons present when I acquired knowledge or information that the said lots were for sale. I do not recall that Dutton's name was mentioned.
8. I know Mrs. Mussey very well.
9. I have known her at least twenty years. She has been in my office frequently to see about different matters of business; cannot tell the number of transactions I have had with her.
10. Came into business relations with Mrs. Mussey in connection with said Dutton about the aforementioned lots.
11. She came to my office to see me with regard to these lots, and, as I was busy, turned her over to Mr. Wine and asked him to talk with her. After they had been talking for some time Mr. Wine

told me she was authorized to sell the property at $25,000; that there was a judgment hanging over the seller in New York that he had to clear up, or that he had to use the money in some way so as to save him a very heavy loss.

12. The only interviews I had were at the office of B. H.
46 Warner & Co. I think I saw her on one other occasion, but accidentally only. I was not present when said Dutton signed the agreement to sell.

13. The name of Louis W. Richardson, as far as I know, was inserted in the agreement before it was signed by any one.

14. I do not know who was present when the agreement was signed. I was not, nor do I know where it was signed.

15. I remember talking to Mr. Wine about having the matter settled up by the Columbia Title Insurance Company.

16. I had no knowledge of any of the details; did not order the title to be examined myself. Mr. Wine attended to the matter.

17. I was not present when Mr. Dutton signed the deed, on or about April 13th, 1896.

18. I did not see Mrs. Dutton; do not know whether Mrs. Dutton was present in Washington on April 10th or was sent for to come on.

19. As far as I know, Mrs. Ellen S. Mussey was the only one who acted as agent, attorney, or broker on behalf of Stephen A. Dutton.

20. Mr. Wine attended to the transaction, as far as B. H. Warner & Co. was concerned, but the said firm did not represent said Dutton.

21. Mrs. Mussey's proposition was to allow a commission of three per cent. on the sale of this property, of which a part was paid to her. The records of the Columbia Title Company ought to disclose how the money was disbursed. I have no personal knowledge upon this subject.

22. At the time of the execution of said deed, on or about April 13th, 1896, Louis W. Richardson was not a clerk in the employ of B. H. Warner & Co. nor in their employ nor connected in business with them.

23. Mr. Louis W. Richardson is a great-nephew of Mr. Louis D. Wine.

24. I have already answered this question and refer to my answer to interrogatory No. 22.

25. He did not.

26. Louis W. Richardson signed the contract in person. I do not know whether he was present or not when Dutton signed said contract, but my information is he was not.

27. I am informed that Mr. Louis W. Richardson is twenty-four years of age.

28. As far as I know, Mr. Richardson relies for his support upon his own exertions and makes a very comfortable living. He resides at Hyattsville, I am informed, under his father's roof. He is unmarried.

29 & 30. The facts hereinbefore and hereinafter stated do not seem to require an answer to these questions.

31. Since the conveyance was made rents have been received by the firm of B. H. Warner & Co. to the amount of $253.65, and ex-

pended for repairs $114.96, and paid in interest and taxes $1,283.58.

After conveyance, the account in the rent department was
47 kept in the name of Louis D. Wine, and in the sales department in the name of Warner and Wine.

32. At or about the time of this purchase, Mr. Louis D. Wine made a note for $7,200.00, which I endorsed, and which was discounted at the Farmers' and Mechanics' national bank, no other parties thereto.

Said note has since been taken up, and, before this controversy arose, destroyed.

33. The property was placed on the books of B. H. Warner & Co. in a general way in 1893, for the price of $55,000. Other brokers had the property. B. H. Warner & Co. had never exclusive control of it.

The owner could raise or lower the price at will. I had no information as to the condition of the title, nor of the fact that the property had been upon our books. For further answer to this interrogatory I refer to my answer.

34. I do not know who gave the property to B. H. Warner & Co. for sale.

35. The money to pay for the property to said Dutton was obtained by negotiation by a note of Louis D. Wine, endorsed by B. H. Warner.

The note was taken up, and destroyed before this controversy arose.

36. Louis W. Richardson acted merely as a nominal party in the transfer, and had no beneficial interest in it, and paid no money out of his own pocket. The title was merely placed in him for convenience.

37. Either an agreement was made with Mr. Richardson to deed the property upon the order of Warner and Wine, or a deed was executed by him to be held, about the time of the execution of said deed from Dutton to Richardson.

38. There was no agreement made by said Richardson to reconvey said lots to said Dutton, or to any one in his behalf.

39. I do not know who was present when said Richardson signed said agreement or deed. If any agreement was made it was simply to show that said Richardson was trustee for said Wine and Warner.

40. No such agreement in our possession or control.

41. No such agreement ever existed.

42. The house, since the transfer was made, has never been occupied by any one except Mr. C. R. Unger, who married a niece of Mr. Louis D. Wine. Mr. Unger is not a member of Mr. Wine's family.

43. Rent for this house has been collected by the office of B. H. Warner & Co., and the account of said property was kept, so far as the rent was concerned, in the name of Louis D. Wine, for the benefit of said Warner and Wine. The rent received is truly set out in my answer to interrogatory No. 31.

44. I made inquiry for and sought for information about Mrs.

Godfrey from a number of people, as set forth in my answer, but did not find out where she was. I knew nothing of the complainant.

48 45. I did not know whether or not Miss Godfrey or her mother were firm in adhering to the price of $55,000 for said lots. I had no prior connections with it or knowledge of them.

46. I first met Mr. F. M. Czaki in the office of B. H. Warner & Co. a few days after this transaction was closed. I knew nothing of him until some days after the sale was closed.

47. I remember distinctly that Mr. Czaki said he was to receive a part of the proceeds of the sale as attorney, but that he had been fooled and trifled with by Mr. Dutton, and that he was going to make it hot for him in New York. This, as stated, was not until after the sale had been consummated and the purchase-money paid.

48. I think I first conversed with Mr. Czaki in the office of B. H. Warner & Co. several days after the close of the sale; do not know who was present. It was my first intimation that there was anything wrong with Stephen A. Dutton. What I said to him and what he said to me I am advised it is not material for me to set forth at large here. It was, in substance, that the defendant Dutton had misled and deceived him in reference to the payment of certain judgments which he represented as attorney.

49. I have seen Mr. Czaki once or twice since, but, as I know nothing about the details of this transaction or his connection with it, do not remember the purport of our conversations, except that he said he was a victim of circumstances and had been badly treated. I had no idea when Mr. Wine and I were negotiating for the property or when the transaction was closed that we were doing anything that conflicted with the interest of Mrs. Godfrey or Miss Godfrey or any one else, and thought that the transaction was perfectly straightforward in every way. This question and similar questions respecting conversations with Mr. Czaki are too general, without more definite inquiries as to my conversations with said Czaki.

BRAINARD H. WARNER.

Answer of Defendant Wine to Interrogatories Propounded in the Amended and Supplemental Bill.

1. I would state that I first met Stephen A. Dutton in the office of the Columbia Title Insurance Co. of this city and was introduced to him by Mrs. Ellen S. Mussey on the day that the said Dutton transferred the property corner 18th and "Q" streets to Louis W. Richardson.

2. I never knew Mr. Dutton before this meeting.

3. I did not know of him in connection with what is known as the "Blodgett claim" or in connection with the promotion of any title or trust Co.

4. I have never had any dealing with him at all.

5. I never had any conversation with any one concerning him

except Mrs. Ellen Mussey. When negotiations were pending I asked her what she knew of him, and she said he came to her with a letter of introduction from one of the best friends her husband ever had.

49 6. The first knowledge I ever had of him was through Mrs. Ellen S. Mussey, in April, 1896.

7. I do not remember that any one was ever present when she and I conversed about him.

8. I know Mrs. Ellen S. Mussey, of Washington, D. C., very well, indeed.

9. I have known Mrs. Ellen S. Mussey for seven or eight years; do not remember ever having had any business transactions with her previous to the deal for 18th and "Q" streets.

10. I did.

11. There was nobody present at the first interview we had in connection with the sale of these lots. I had several interviews with her after this, at one of which I asked her why the owner of these lots was in such a great hurry to close the matter up. She stated that she believed he had a judgment hanging over him in New York, which was giving him a great deal of trouble; hence the hurry to close the same. These interviews were had in the office of B. H. Warner & Co.

12. I was not present when the said Dutton signed the agreement to sell the lots to Louis W. Richardson.

13. The name of Louis W. Richardson was inserted in the agreement before it was signed by any one.

14. I have answered that I was not present.

15. The Columbia Title Insurance Co. of the District of Columbia was employed by me for myself and codefendant Warner to examine title to lots referred to.

16. I do not remember distinctly, but I think I made an application in person to Mr. Edmonston, of the Title Insurance Co., to make title. I also think I requested him to make it special because the agreement called for settlement in five days.

17. My recollection is that I was present when Mr. Dutton signed the deed (but I am not positive), about the 13th day of April, 1896. I was called by telephone by Mr. Edmonston to settle some questions as to taxes, interest, etc. Mr. Dutton refused for a time to sign this deed unless the taxes and interest were assumed by the purchaser. Mr. Edmonston refused to make such allowance and called me to his assistance. I went to his office and found Mr. Edmonston, Mrs. Mussey, Mr. Dutton, and his wife all present, and I believe he signed the deed before I left. Of this, however, I am not positive.

18. The only time I ever saw Mrs. Cora M. Dutton was when I called at the office of Mr. Edmonston to settle the matter of taxes and interest. I do not know how it happened that she came to Washington. I have no knowledge on that subject.

19. Mrs. Ellen S. Mussey, broker, was for Dutton in the transaction of the sale of this property, as she was the one who called our attention to it.

20. I was the one who attended to the negotiations of purchase of this property for the purchasers. No member of said firm acted for Mr. Dutton.

21. The sale was for $25,000, subject to a commission of three per cent., which commission by agreement was divided between Mrs. Mussey and B. H. Warner & Co., the latter receiving two-thirds of it, I think.

The checks were all drawn by the Columbia Title Insurance Co., and will speak as to this.

22. At the time of the execution of the deed from Dutton to Louis W. Richardson the said Louis W. Richardson was not in the employ of B. H. Warner & Co., nor was he connected in business with them.

23. Louis W. Richardson is my great-nephew.

24. I have answered this interrogatory in the negative.

25. Louis W. Richardson did not pay any of the consideration for the conveyance of these lots by Dutton.

26. Louis W. Richardson signed the contract in person.

27. Louis W. Richardson is twenty-four years of age.

28. Louis W. Richardson relies, I believe, upon his own exertion for his support, but lives with his father and mother at Hyattsville, Md., who are in comfortable circumstances.

29. I have answer- this interrogatory in the negative.

30. I have answered this interrogatory in the negative.

31. Since the conveyance of this property the house has been rented a portion of the time at $25 per month, and there has been collected $253.65 and expended for repairs $114.96. There has been paid in interest and in taxes $1,283.58, as per bills, on account of this property. The account in the rent department was kept with L. D. Wine and in the sales department with Warner and Wine.

32. About the time of this purchase a note of L. B. Wine, endorsed by B. H. Warner, was discounted at the Farmers' and Mechanics' national bank, I think, about $7,200. This money was used in connection with this sale. The note was taken up and distroyed.

33. This property was placed with us for sale on October 10th, 1893, at the sum of $55,000; never had an offer for it, and, as stated in my answer attached hereto, to which I refer, it had been erased and disappeared from the sales bulletin of the firm long before the transaction with said Dutton.

34. At the instance of defendant Godfrey.

35. I have already answered this interrogatory.

36. Louis W. Richardson had no other interest than as holder of the legal title. In answer to 37, 38, 39, 40 and 41 I would say that there was no agreement made with Louis W. Richardson other than a verbal one to convey this property to B. H. Warner and Louis D. Wine or as they might direct. A deed to them was executed to them at the time and is in their possession.

42. The house, since the transfer was made, has never been occupied except by Mr. C. R. Unger, who married a niece of Louis D. Wine.

43. Rent for this house has been collected by the office of B. H. Warner & Co. and passed to the credit of Louis D. Wine.

44. The information sought before entering into this transaction is set out in my answer to the bill. I had no recollection of Mrs. Godfrey at that time. After the property had been deeded to Louis W. Richardson, B. H. Warner & Co. wrote to Mrs. Godfrey of the sale of the property, and requested her to send the keys of 1801 "Q" St., which she did by return mail.

51

45. I knew at one time that Mrs. Godfrey had named $55,000 as a price at what she would sell the said lots, but not at the time of this transaction. I had never heard of the complainant as connected with them.

46. I know Frederick M. Czaki. I first met him in the office of B. H. Warner & Co. after the transaction was closed and the money paid.

47. Subsequently to the closing of said transaction Mr. Czaki stated to me that he was in the interest of a client to procure a portion of the purchase-money of this property. This was the first knowledge of him or his connection with the matter that I had.

48. The first time that I had any conversation with Mr. Czaki in reference to said lots was in the office of B. H. Warner & Co.

I am not sure, but I think Mr. B. H. Warner was present. It was some time after the transaction had been completed. He stated that he had been misled and deceived by Dutton in respect to the collection of some judgments he was to collect and derived information as to the real character of our transactions with the said Dutton, which I gave substantially as set forth in my answer.

49. I have had subsequent conversations with Mr. Czaki principally relative to the suit which was brought against Dutton in New York, but I am unable to answer this question without more definite inquiry than is contained in this question.

"EXHIBIT A."

(Copy.)

B. H. Warner & Co.

DEAR SIRS: Please find enclosed key to the house 1801 "Q" street N. W.

Yours very truly,

(Signed) M. A. GODFREY.

287 W. 70 street, corner West End avenue, New York.
April 18th, 1896.

Filed August 17, 1897.

J. R. YOUNG, *Clerk.*

52 *Additional Affidavit of Louis D. Wine to Answer.*

Filed Aug. 21, 1897.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON. } No. 17631, Eq. Doc. 41.

DISTRICT OF COLUMBIA, *ss:*

I, Louis D. Wine, one of the defendants in the above-entitled cause, having my attention called to the fact that through inadvertence the affidavit to my answer filed herein on the — day of August, A. D. 1897, does not extend to or include my answers to the interrogatories accompanying the amended bill of the complainant, on oath say that my answers to said interrogatories and to each of them are true, to the best of my knowledge, information, and belief.

LOUIS D. WINE.

Subscribed and sworn to before me this 21st day of August, A. D. 1897.

[SEAL.]

HENRY J. GROSS,
Notary Public.

Amendment of Amended and Supplemental Bill.

Filed Aug. 24, 1897.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

LILY ALYS GODFREY, Complainant,
vs.
STEPHEN A. DUTTON ET AL., Defendants. } In Equity. No. 17631.

Comes now the complainant in the above-entitled cause, by her solicitors, Jeremiah M. Wilson and David Keane, and, with leave of the court first had and obtained, files this her amendment to the amended and supplemental bill of complaint herein as follows:

The said amended and supplemental bill is amended by adding thereto the following interrogatories:

Additional Interrogatories to be Answered by the Defendants Louis D. Wine and Brainard H. Warner.

First.

Who destroyed the note mentioned in your answer to interrogatory 32?

(2.) State the month when it was destroyed.

(3.) Who were present at the time?

53 (4.) In whose office or house did the destruction take place?

(5.) State how it was destroyed; whether by burning it or otherwise.

(6.) If there are any fragments left, produce them.

Second.

State who proposed or suggested that said note should be destroyed; and,

(2.) Give the full conversation on that subject.

Third.

Did not Mrs. Mussey tell you that the person who gave Dutton the letter of introduction to her, mentioned in your answer to the fifth interrogatory, was Horatio N. Twombly, and that he had been swindled by Dutton?

Fourth.

When you divided the three per cent. commissions on $25,000 with Mrs. Mussey, as stated in your answer to interrogatory 21, retaining for B. H. Warner & Company, of which you are a member, two-thirds—that is, $500.00 thereof—and giving Mrs. Mussey one-third—that is, $250.00 thereof—did you disclose to Dutton that you had made an agreement with his broker to divide the commissions with her?

Fifth.

Did you disclose to Mrs. Mussey at the time of said transaction, to wit, in April, 1896, that Louis Wine Richardson was merely a dummy, and that you and your partner were the real purchasers? and,

(2.) Did you disclose such fact to Dutton at the time of said transaction?

(3.) Or did you so share said commissions, concealing the fact from Dutton and Mussey or either of them that you were the real purchasers?

Sixth.

On what ground did you base your title or that of said firm of which you are a member to a share in said commissions, if you and your partner were the real purchasers and disclosed such fact to the vendor and his broker?

Seventh.

Is it not a fact that Dutton has always maintained that the said transaction was merely a loan in the form of a sale to protect him against his judgment creditors and the plaintiff, whom he swindled? and,

(2.) Is it not true that thereafter the interest to the Provident Life and Trust Company of Philadelphia next accruing on the deed of trust held by said company was not paid by you or your partner, but by said Dutton as the real owner of said property?

54

Eighth.

When you were informed by Mrs. Mussey, as you related in your answer to the eleventh interrogatory, that the reason why Dutton was in "such a great hurry" was that he had "a judgment hanging over him in New York," did it not occur to you that he might be attempting to dispose of the property to hinder, delay, or defraud creditors or defraud this plaintiff as grantor, or for some other fraudulent purpose?

Ninth.

How did you reconcile with an honest intent on his part the fact that he was a judgment debtor attempting "in such a great hurry" to dispose of property for $25,000, or, to be exact, for $24,250 (the commissions of your firm and Mrs. Mussey being deducted), the title to which he had just acquired (the ink on his deed being hardly dry) and which he had not yet had time to record, which very property you had entered on your books for sale for $55,000 on October 10th, 1893, as you stated in your answer to interrogatory 33?

Tenth.

When Mrs. Mussey informed you, as in the eighth paragraph of your answer you admit she did, that Dutton was a judgment debtor "who had several judgments against him in New York which it was important he should satisfy immediately," did it not occur to you as inconsistent and suspicious that under such circumstances he should have been able to purchase a few days previously those valuable lots at the corner of N. H. avenue and Q street, having a frontage of over 112 feet and comprising an area of 6,367 feet of the choicest land in the fashionable residence part of Washington, and after just acquiring them with these judgments hanging over him that he should immediately offer them for sale again, "in such a great hurry," for less than half the price at which your firm had entered them on your books for sale in 1893?

Eleventh.

Did you have no knowledge or information of said Dutton at the time of said alleged purchase in April, 1896, other than that he was a judgment debtor from New York, where he had several judgments hanging over him, who had acquired within a few days previous deeds to lots 1, 2, 3, and 66, on the corner of N. H. avenue and Q street, and was in "such a great hurry" to dispose of the same at less than half the price at which your said firm had entered them on your books for sale on October 10th, 1896?

If you knew anything further about him, (2) state fully all you know; (3) mention the name and address or names and addresses of the person or persons who informed you thereof; (4) state who was present at the time when you received such information; (5) state about the date when it was and where you were at the time.

If you knew nothing further about him, (6) state why you refrained from making inquiries.

55 If you say you did make inquiries, (7) state why you did not so mention in answer to the fifth interrogatory of the amended and supplemental bill filed herein.

Twelfth.

Did you not individually or did not the said firm of B. H. Warner & Co., of which you are a member, have a transaction with Dutton relating to a certain lot or lots in Le Droit park previous to April, 1896, or several years ago?

If yea, (2) describe the transaction and whether you or your said firm did not act for Dutton.

And (3) state what memoranda in regard thereto appears on your books, and (4) state whether the books of your said firm show any other transaction or transactions with or for the said defendant, Dutton. If yea (5), describe the same fully.

Thirteenth.

Referring to your answer to interrogatory 22 of the amended and supplemental bill herein, state whether Louis Wine Richardson was ever a clerk in your office, or otherwise in your employ, or connected in business with you. If yea (2), state the date when such employment or business connection ceased, and (3) state for how long a time such employment or business connection had continued, and state (4) whether at or about the time referred to in said answer to said interrogatory 22nd, to wit, April 13th, 1896, you or the said firm of which you are a member did not have business relations with the said Richardson concerning the purchase or sale of land at Hyattsville.

Fourteenth.

State the names of all the persons who were present when the deed referred to in your answer to interrogatory 47 was executed to you by Louis Wine Richardson, and (2) at whose office or house the same was executed; (3) produce and file the said deed which you stated is in your possession, and (4) mention the date when it was delivered to you, and (5) who were present at the time, giving names and addresses.

Fifteenth.

Let the defendant Warner give the names and addresses of the "sundry persons" residing at the Hotel Arno, or in the vicinity thereof, of whom he inquired "concerning" the said Mary A. Godfrey, as averred in his answer.

Sixteenth.

Let the defendant Warner give the name of the person and his address who informed the said Warner before the consummation of said contract of April 10, 1896, that said property had been on the books of his said firm for sale at the price of $50,000, and that at that time it was the property of the said Mary A. Godfrey, as averred in his answer.

56

Seventeenth.

Let the defendant Warner state whether he did not verify the said information by referring to the books of the said firm and the entry thereon of October 10th, 1893, showing that the price of the said property on the said books was $55,000, and let him state what, if anything, he said to his partner, Wine, on the subject.

Eighteenth.

Let the defendant Warner state whether he did not then inquire of his said firm or consult their books and employees as to the address to which they had last written the said Mary A. Godfrey.

Nineteenth.

Let the defendants Warner and Wine state whether they did not know that the address of complainant and her said mother, Mary A. Godfrey, was conspicuously posted on the said property, and that the said address was the same as that entered in the books of the said firm to which the communications of the said firm to the said Godfrey had previously been sent.

J. M. WILSON AND
DAVID KEANE,
Sol'rs for Complainant.

(Endorsed:) Leave to file granted. A. C. Bradley, justice.

Amended Affidavit to Answer of Defendant Brainard H. Warner.

Filed Aug. 25, 1897.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } No. 17631, Eq. Doc.

DISTRICT OF COLUMBIA, *ss:*

I, B. H. Warner, one of the defendants in the above-entitled cause, having my attention called to the fact that, through inadvertence, the affidavit to my answer filed herein on the — day of August, A. D. 1897, does not extend to or include my answers to the interrogatories accompanying the amended bill of the complainant, on oath say that my answers to said interrogatories and to each of them are true to the best of my knowledge, information, and belief.

BRAINARD H. WARNER.

Subscribed and sworn to before me this 23 day of August, A. D. 1897.

[SEAL.]

HENRY J. GROSS,
Notary Public.

57 Filed Sep. 14, 1897.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } No. 17631, Equity Doc.

Answers of Defendants Brainard H. Warner and Louis D. Wine to the Additional Interrogatories.

The defendants Brainard H. Warner and Louis D. Wine, in response to the additional interrogatories filed by the complainant as an amendment to her amended and supplemental bill herein, are advised and believed, and therefore aver, that the 1st, 2nd, 3rd, 4th, 5th, 6th, the first half of the 7th, the 9th, and the 14th of said interrogatories are open to just exception as being irrelevant, immaterial, argumentative, and without bearing upon any rights of complainant in this cause, but being desirous of speeding the cause, and without waiving any of the said objections to said interrogatories, they answer as follows:

Answers of Louis D. Wine.

1. As an act of memory I cannot say who destroyed the note nor when, nor who were present, nor where, nor how. It is my invariable custom to destroy my personal notes when they are taken up; and as I am unable to find this note among my papers after due search, I am satisfied that it was destroyed in accordance with this custom, doubtless by myself. If there are any fragments I do not know where they are.

2. No one proposed or suggested the destruction of the note nor was there any conversation on the subject. If destroyed, as I am satisfied from my course of business and through my inability to find it that it was, it was done in the ordinary course of business. It never occurred to me that it was important either to keep or destroy it. It was discounted at the Farmers' and Mechanics' national bank of this city, whose books doubtless contain the full record, showing its terms and the parties to it quite as fully as the production of the note could possibly do.

3. I think Mrs. Mussey made such a statement to me after the suit was brought. She did not do so at the time of the transaction, but simply said that Mr. Dutton came introduced to her by one of the best friends her husband ever had.

4. I had no conversation with Mr. Dutton upon that subject or upon any other, except that he insisted on the purchasers paying the taxes and accumulated interest, which I declined to do, and told him the sale would be abandoned if that was insisted upon.

5. I said nothing to Mrs. Mussey upon the subject of Mr. Louis Wine Richardson's connection with the matter. I did not suppose

that she was at all interested in that connection, nor did I
58 have any conversation with Mr. Dutton in that regard for the same reason. I neither desired nor attempted to conceal anything from either of them.

6. Mrs. Mussey's original proposition to us was that there was a commission of three per cent. in the matter, of which she wished one-third, and the remaining two-thirds of which she would allow us, and the transaction was closed on that basis. It has been entirely satisfactory to Mrs. Mussey in so far as I am advised, and, as I am advised, it is not a matter in which the complainant or Mr. Dutton was or is interested.

7. Mr. Dutton never claimed to me or within my knowledge that the transaction was a loan. I first heard that suggestion after his trial in New York, being told that at the trial he asserted he had negotiated a loan and not a sale; nor is it true that he ever paid any interest upon the encumbrance after the sale. At the time of completing the transaction the accrued interest on the encumbrance was deducted from the purchase-money, but the interest has always been paid by my codefendant and myself.

8. It did not. I simply supposed, as I was informed, that it was to his interest to raise some money quickly to meet his obligations in New York.

9. I did not know how long Mr. Dutton had owned this property, nor that this deed had not been recorded, nor was I aware at the time of the transaction that the property had ever been upon our books for sale; that there was any dishonest intention in the matter never occurred to me at all, nor did it occur to me that any interpretation upon my part of his purposes or motives was necessary.

10. If it be incumbent upon me to answer interrogatories which consist principally of argument, I say that I did not know, nor had I any occasion to inquire, how long Mr. Dutton had been the owner of this property, nor did it occur to me as inconsistent or suspicious that he should offer it for the price named under the circumstances detailed by Mrs. Mussey.

As stated above, I was not aware at the time that the property had ever been on the books of our firm for sale. I never at any time considered the price for which it was entered on our books as a practical one, and, if I had remembered it, the depreciation in the asking prices of property between 1893 and 1896 had been so great that I should not have been surprised. At the time this transaction took place it was difficult to sell property at any price and idle to offer property at all except at a low figure.

11. I had no knowledge whatever concerning Mr. Dutton except what Mrs. Mussey told me. As above stated, I did not know when he had acquired the property in controversy. I made no inquiries about him, because I knew of no occasion for such inquiries.

12. I have no knowledge of any previous transaction of Mr. Dutton, either with myself, my codefendant, or our firm. I have had our books examined for the past ten years, and I find no record of any such transaction.

13. Mr. Richardson was employed by our firm about seven
59 or eight years ago for about two years, when his employment ceased. In April, 1896, he was a partner either of Mr. Carr or of Messrs. Rodgers & Co., of Hyattsville, but had no connection with myself or our firm. In the spring of 1897 he again entered the employment of B. H. Warner & Co. as a salesman, and is now in our employ—that is to say, if he effects a sale for us he shares with us a commission. That is the extent of his employment with us.

14. I myself was not present when the deed from Richardson to my codefendant Warner and myself was executed—in so far as I remember—nor do I know who was nor at what office or house the same was executed. I have no record of the date when it was delivered to me, but believe it was contemporaneously with the conveyance from Dutton, nor do I recall who was present when the deed was delivered to me. The deed is in our possession and will be produced at any hearing of the cause if desired; but, as I am advised and believe, and therefore aver, the complainant is without right to require us to file in this cause this evidence of our title to the property, and I decline so to do unless thereunto required by the court.

19. I did not know that complainant's address or that of her mother was posted on the property conspicuously or otherwise, and, as heretofore stated, I was not aware at the time that any memorandum of it had ever been entered on our books.

LOUIS D. WINE.

E. H. THOMAS,
J. J. DARLINGTON, *Solicitors.*

DISTRICT OF COLUMBIA, *ss:*

I, Louis D. Wine, on oath say that I have read the foregoing answers by me subscribed; that the said answers, in so far as they are set forth on my personal knowledge, are true, and that those set forth on information and belief I believe to be true.

LOUIS D. WINE.

Subscribed and sworn to before me this 13th day of September, A. D. 1897.

[SEAL.] HENRY J. GROSS,
Notary Public.

Answers of Brainard H. Warner.

1. I do not know who destroyed the note in question, nor in what month, nor where, nor who were present, nor how it was destroyed, nor whether any fragments were left, nor where such fragments are. The note was that of Mr. Wine, who informed me, after the suit was filed and when the question of this note was first raised, that he had destroyed it. I am sure that I saw my endorsement canceled, but my knowledge on this point is from my course

of business. I have no distinct recollection in this particular instance.

2. No one, to my knowledge, proposed or suggested the
60 destruction of the note, nor was there any conversation upon the subject of which I have any knowledge.

3. No; she never made any such statement to me. At the time of the transaction she told me Mr. Dutton came to her with an introduction from a valued friend of her husband. I do not recall that she ever spoke to me on this point afterwards.

4. No. I never saw Dutton in the transaction or had any communication with him.

5. It is my impression that Mrs. Mussey knew that Mr. Wine and myself were the real purchasers. There was no attempt to conceal it in so far as I was concerned or in so far as I know. I had no conversation with Mr. Dutton upon any part of the transaction, as I have above stated.

6. The allowance of a part of the commission to us did not originate with us. Mrs. Mussey, in offering us the property, stated that there was a commission of three per cent. allowed by Mr. Dutton, and that she would concede us two-thirds of it, which was done without any further discussion of the point between us.

7. Mr. Dutton never claimed to me or within my knowledge that the transaction was a loan. I first heard that suggestion after his trial in New York, being told that at the trial he asserted he had negotiated a loan and not a sale; nor is it true that he ever paid any interest upon the encumbrance after the sale. At the time of completing the transaction the accrued interest on the encumbrance was deducted from the purchase-money, but the interest has always been paid by my codefendant and myself.

8. It did not occur to me that Mr. Dutton was or might be attempting to hinder, delay, or defraud creditors or the plaintiff, or that he was intending any other fraudulent purpose. I was simply informed and believed that it was to his interest to raise some money quickly, and that to this end he was desirous of disposing of this property.

9. I did not inquire, nor did I know, how long Mr. Dutton had owned this property, nor was I aware until this suit was filed that his deed had not been recorded. I instructed my codefendant to have the title examined by the Columbia Title Company and gave myself no further concern about the title. I knew of no circumstances at the time which made it incumbent upon me to consider Mr. Dutton's purposes, nor had I the slightest intimation or suspicion at the time of any dishonest intent upon his part. Mrs. Mussey's explanation of the reason why he wished to raise money was to me a sufficient explanation of his haste in the matter.

10. As stated above, I had no personal knowledge at the time that the property had been placed on our books at all or at any price. The offer of the property at the price for which it was sold to us in 1896, under the then conditions of the market and real-estate business, did not excite my suspicion at all, nor did it occur

to me that there was any inconsistency or suspicion about it. Before the transaction closed, as I have previously stated, I was informed that the property had been upon our books in the name of Mrs. Godfrey, and I made inquiry concerning her, as stated in my former answers.

61 11. I knew nothing of Mr. Dutton other than what Mrs. Mussey told me about him. I was not aware that he had acquired the property in controversy "only a few days previous," as stated in the interrogatory; as stated, I knew nothing of the entry of the property upon the books of our firm at a higher price in 1893. I made no inquiries about him, because, in the first place, I knew of no reason why I should do so; in the second place, because the account Mrs. Mussey had given of him seemed amply sufficient, and, in the third place, I left the whole matter of seeing that we got a good title to the Columbia Title Company.

12. I have no knowledge of any previous transaction of Mr. Dutton either with myself, my codefendant, or our firm; we have had our books examined for the past ten years and find no record of any such transaction.

13. Mr. Richardson was employed by our firm about seven or eight years ago for about two years, when his employment ceased. In April, 1896, he was a partner either of a Mr. Carr or of Messrs. Rodgers & Co., of Hyattsville, but had no connection with myself or our firm. In the spring of 1897 he again entered the employment of B. H. Warner & Co. as a salesman, and is now in our employ—that is to say, if he effects a sale for us he shares with us a commission; that is the extent of his employment with us.

14. I had no personal connection with the execution or delivery of the deed from Richardson to my codefendant and myself. I was not present at its execution; do not know who was nor in what building the same was executed nor of the date when it was delivered to us. The deed will be produced at any hearing of the cause or at any time the court may require.

15. I inquired concerning Mrs. Godfrey of Mr. A. K. Phillips, Jr., whose present address is 1206 G street northwest, this city, and also of Mrs. A. K. Phillips, whose present address is Fredericksburg, Va., and of Hon. John F. Lacey, member of Congress from Iowa, whose home address I do not know, and of Mr. John B. Wight, now one of the Commissioners of the District of Columbia, and, I think, of others whose names I do not now recall. I do not remember referring to the books of our firm or to the entry of the property in controversy thereon. My information on that subject came to me from Mr. Phillips, who was employed by the firm and was familiar with the books. I do not think I personally referred to the books for verification of what he said to me. I do not remember speaking to Mr. Wine at all on this subject.

18. I did nothing of this kind that I can recollect.

19. I knew nothing of the address of Mrs. Mary A. Godfrey, nor of its being posted on the property; nor did it occur to me that it was at all necessary to pursue Mrs. Godfrey further after I learned

that she had disposed of the property to Mr. Dutton. For this reason I did not attempt to do so.

BRAINARD H. WARNER.

E. H. THOMAS,
J. J. DARLINGTON, *Solicitors.*

62 DISTRICT OF COLUMBIA, *ss:*

I, Brainard H. Warner, on oath say that I have read the foregoing answers by me subscribed; that the said answers in so far as they are set forth on my personal knowledge are true, and that those set forth on information and belief I believe to be true.

BRAINARD H. WARNER.

Subscribed and sworn to before me this 13th day of September, A. D. 1897.

HENRY J. GROSS,
Notary Public.

[SEAL.]

Replication.

Filed Nov. 22, 1897.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON, CORA M. DUTTON, His Wife; Louis Wine Richardson, Fred M. Czaki, Mary Alice Godfrey, Brainard H. Warner, and Louis D. Wine. } In Equity. No. 17631.

The complainant hereby joins issue with the defendants Brainard H. Warner and Louis D. Wine on their answers to the amended and supplemental bill and amendment thereto.

JEREMIAH M. WILSON,
Solicitor for the Complainant.

Answer of Louis Wine Richardson.

Filed Dec. 8, 1897.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } Equity. No. 17631.

The answer of the defendant Louis Wine Richardson to the amended and supplemental bill of Lily Alys Godfrey, filed in this cause on the — day of ——, ——, wherein it is prayed that this defendant be made a party defendant and required to answer the exigency thereof, shows to the court:

This defendant objects by way of demurrer to any relief in this cause against him individually, or as the owner of the legal title, or as trustee as to lots one (1) and sixty-six (66), in square one hundred and thirty-four (134), which lots, according to the record in this cause, were conveyed to Mary Alice Godfrey to "convey to the said Lily Alys Godfrey (the complainant) or to such person
63 as she may direct when she shall attain the age of twenty-one years;" which trust he is advised was fully and regularly executed by the conveyance of said property (among other property) to the defendent Stephen A. Dutton, as shown by said record. Defendant is therefore advised that complainant is without standing in any court to maintain any suit in respect to said lots. Defendant further *accepts* and objects to any relief against him, because he is advised that in and by the original bill and by the 7th paragraph thereof this cause was originally brought against him solely on the ground that this defendant "parted with no valuable consideration," and therefore "is not an innocent holder for value, but, on the contrary, has no interest, legal or equitable, in said property," and "that the said transaction between the defendants Stephen A. Dutton and Cora M. Dutton and the defendant Louis W. Richardson was without consideration, and that said deed (to him) is fraudulent and should be set aside," which bill this defendant answered and disclosed said consideration, and as well his title "as far as he was advised by counsel it was material to be disclosed," and reserving his right to make further discovery, if required, under the rule of this court, as he is advised by counsel he then had and still has the right to do; and whereas he is advised that the said amended and supplemental bill makes an entirely different and new case, requiring different evidence, not competent under said original bill, and proceeding under different legal premises from the original bill, *and* he prays the same benefit for these exceptions as though he demurred for said reasons to said amended and supplemental bill.

1 & 2. This defendant says that he is a resident of the State of Maryland, and he neither admits nor denies the remaining allegations of said paragraphs.

3. This defendant has no personal knowledge of the matters set forth in the 3rd paragraph of the bill, and his knowledge thereof is derived from what he is informed the record contains. As far as any allegation is made pertaining to said lots one (1) and sixty-six (66), he is advised, as heretofore stated, that the complainant is without standing or right to assail the title thereto conveyed by said Dutton and wife to him.

4. This defendant believes the allegations of paragraph four of said bill as to the encumbrances on said property to be substantially correct; but to avoid any error in that regard, he relies upon the records in the land records of the District of Columbia in reference thereto.

In regard to the allegation that at some time (not mentioned in said bill) the complainant received rent at the average rate of fifty ($50) dollars per month on said brick dwelling on said lots one (1)

and sixty-six (66), this defendant requires strict proof if the same be material.

5. This defendant has no knowledge of the allegations of the 5th paragraph of said bill, but on information and belief derived from said reading the answer to said paragraph made by his codefendants Warner and Wine he says that the facts regarding said alle-
64 gations in said paragraph are as stated by them, the said Warner and Wine.

6 & 7. This defendant has no personal knowledge of the matters set forth in the 6th and 7th paragraphs of said bill, and if the same or any of them be true he never had any notice thereof, neither did this defendant have notice or knowledge of any circumstances which put him on inquiry respecting the same prior to the conveyance of said property to him and the payment of a full and fair valuable consideration therefor. If the said allegations be material, he calls for strict proof.

As to the want of knowledge and notice had by the firm of B. H. Warner & Co. and the Columbia Title Company and his codefendants, Warner and Wine, he refers to the answer of said Warner and Wine in response to the said paragraphs of said bill, which answers are true, to the best of this defendant's information, knowledge, and belief.

8. This defendant has no knowledge and did not prior to said conveyance to him and the payment of said consideration have any notice whatever of the alleged transactions with the said Dutton had by complainant or her mother; neither did he know or have notice of the alleged purpose of said Dutton to cheat and defraud the complainant or any one else. If said allegations be material to him, he calls for strict proof thereof.

This defendant is advised that there is no reference to him in said paragraph excepting only so far as to refer to the deed to him filed with his answer to the original bill.

This defendant, further answering, says that he is and was advised by counsel that the original bill only required of him "a defence to the title of 'record' in him," and therefore in his answer to said bill he stated that he made said purchase through B. H. Warner & Co., real-estate brokers, which firm was then and is now composed of the defendants Warner and Wine and Clarence B. Rheem and George W. F. Swartzell, to which firm or some of its members the said Ellen Mussey, under the circumstances detailed in his original answer, offered said property for sale for twenty-five thousand ($25,000) dollars upon the representations set forth in his said answer. This defendant was advised by counsel that he was not required to discover and disclose the relations existing between the defendants Warner and Wine and himself by said answer, and that under the bill then filed in this cause the only question raised was as to the good faith of the title acquired by him through the conveyance from the said Dutton; to the determination of that question the relations between himself and the defendants Warner and Wine were wholly without materiality, and therefore not called for or at all necessary to be set forth.

The said firm of B. H. Warner & Co. conducted the said negotiation for the purchase of said property and caused the contract of purchase, a copy of which is filed with said original answer, to be prepared.

Nevertheless, shortly "after" filing his said answer and in order that the facts might be in possession of complainant, without
65 disguise or concealment from her, his solicitor, with the said defendants, Warner and Wine, called upon the then and now senior counsel for the complainant, *and* this defendant is informed and believes, and therefore avers, and exhibited to him the checks theretofore paid and cancelled, issued in payment of the said consideration, and explained that the said Mussey had brought the said property to the attention of the said defendants, Warner and Wine, and the circumstances thereof, and that the defendant held the title of them as a matter of convenience, and in all other respects explained candidly the entire transaction. This defendant further states that the complainant, through her counsel, as he is informed and believes, thereupon, as a result of said voluntary statement, filed her first amendment to the original bill, charging, in substance, — was only a nominal party to the said transaction, and that the real parties were the said Dutton, on the one part, and the defendants Warner and Wine, on the other, and setting up that the said consideration was pretended to have been advanced or furnished to said Dutton by said Warner and Wine. After the statement had been fully and voluntarily made, as aforesaid, and notwithstanding this litigation was then pending to determine her rights, if any she had, as against the said Warner and Wine, the complainant and certain other of her counsel, by threats of indictment, endeavored to persuade or coerce this defendant into making a conveyance of the title to said property to complainant, and, upon failure of her said efforts, filed said amended and supplemental bill.

This defendant has no knowledge whatever of any prior relations on the part of said defendants, Warner and Wine, or any member of the firm of B. H. Warner & Co., with said property or with complainant and her mother, and, in answer to all allegations with reference to any agency of said codefendants made in said bill, this defendant refers to the answer of his codefendants, Warner and Wine, which answer, he is informed and believes, states the facts in regard thereto.

This defendant took title to said lots as trustee, although, as between himself and third parties, the said firm of B. H. Warner & Co., as he is and was advised, was his agent, *and* set forth in his original answer. This he consented to do "as a matter of convenience to the defendant Wine and his codefendant, Warner, because this defendant was unmarried and could convey direct to any purchaser, without requiring the wives of the said codefendants to execute and acknowledge a deed." This is and has been a method not infrequently adopted by persons dealing in real estate in this District, and was not regarded by this defendant as an unusual or extraordinary request.

At or about the time of said conveyance to this defendant by said

Dutton and wife, to wit, on the 16th day of April, 1896, by deed dated the 15th day of April, 1896, this defendant "conveyed" said real estate to said Warner and Wine as a protection to the said defendants in event of the death of this defendant.

This deed was made with the understanding that it should not be recorded, but that the title of record and as to any subse-
66 quent purchaser should remain and be in this defendant, who would pass title in event of a sale.

9. Answering the 9th paragraph of said bill, this defendant says that he is a great-nephew of the defendant Wine.

This defendant was not connected with the business or in the employ of said B. H. Warner & Co. in April, 1896, and the circumstance that he took title, as before stated, happened solely, so he believes, because he was unmarried, was related as aforesaid to said Wine, and was regarded by said Warner and Wine as worthy of confidence.

This defendant states that he was wholly innocent of intending any injury or wrong to any person in so taking said title.

The epithet applied in said bill that he was the instrument and tool of said codefendants is unmerited. Whether he was without means or dependent on the bounty of his family or supported himself or not are matters not material to this pretended right of complainant in this case, as he is advised, but "said allegations are untrue." This defendant says "he never pretended or intended to claim that he furnished the money to buy said property," but that said firm of B. H. Warner & Co. or the defendants Warner and Wine furnished the money, and the complainant so well understood at the time of filing said amended and supplemental bill.

This defendant is informed and believes that said Warner and Wine have collected the rent of said lots one (1) and sixty-six (66), but this defendant says that the said house was surrendered to them as shown by the exhibit to defendant's original answer.

10. This defendant has no knowledge of the power of attorney mentioned in the 10th paragraph of said bill, neither does he know of the decree of the 29th of March, 1897. This defendant never claimed any interest in said lot forty (40), square ninety-two (92). If said matters are material he demands strict proof thereof.

11. This defendant has no knowledge of the allegations of the 11th paragraph of said bill, and he says that he never had any knowledge or notice of any of said matters, if they be true, until the bringing of this suit, and then only from the bill. This defendant demands strict proof of said allegations if they be in any respect material.

12. This defendant says the demand for a reconveyance was made upon him after the filing of the suit in this cause, under the circumstances set forth in his answer herein to the 8th paragraph of said bill. It was made after full voluntary statement to the complainant, or her solicitor, of the title he held, and the exhibition of the receipts or checks for the purchase-money, as therein set forth, and he avers that the said alleged demand was not made in good faith, but was an effort made by the complainant and one of her counsel

to procure him to commit a fraud upon his codefendants, Warner and Wine, by conveying said property to complainant without notice to them, thereby operating upon the fears of this defendant sought then to be raised, and an effort to make him comply with said demand while the litigation in this case was pending and undetermined.

67–82

(Signed) L. W. RICHARDSON.

E. H. THOMAS,
Solicitor for Defendant.

DISTRICT OF COLUMBIA, *ss:*

Louis W. Richardson, being duly sworn, deposes and says that he has read the above answer and knows the contents thereof; that the matters and things therein stated on his personal knowledge are true, and the matters and things therein stated on information and belief he believes to be true.

LOUIS W. RICHARDSON.

Subscribed and sworn to before me this 7th day of December, A. D. 1897.

HENRY J. GROSS.

Replication.

Filed Dec. 17, 1897.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON, CORA M. DUTTON, His Wife; Louis Wine Richardson, Fred M. Czaki, Mary Alice Godfrey, Brainard H. Warner, and Louis D. Wine. } In Equity. No. 17631.

The complainant hereby joins issue with the defendant, Louis Wine Richardson on his answer to the amended and supplemental bill and amendment thereto.

J. M. WILSON,
Solicitor for the Complainant.

* * * * * * *

83 Mr. J. ROBERTS FOULKE, being duly affirmed according to law, is examined in chief by Mr. David Keane.

Q. Where do you reside?
A. In the city of Philadelphia.
Q. How long have you resided here?
A. Twenty-four years.
Q. Are you connected with the Provident Life & Trust Company?
A. I am.

Q. What office do you hold in that company?
A. I am the trust officer of the company.
Q. How long have you held that office?
A. Twenty years or thereabouts.
Q. Do you know the defendant Brainard H. Warner, the real-estate broker, of the firm of *P.* H. Warner & Company, No. 916 F street, Washington?
A. I have met him three or four times in my life.
Q. Did you ever have any conversation with him in regard to the property in Washington, on which your company now holds a deed of trust in the sum of $10,000 to secure the payment of a certain note of Lily Alys Godfrey, known as the northwest corner of New Hampshire & Q streets?
A. I have not.
Q. Have any letters passed between you and Mr. Warner on that subject? And, if so, produce the same.
A. Yes; certain letters have passed between us on the subject you inquire about.
Q. Produce the same.

Witness produces letter from B. H. Warner, dated December 15th, 1896, which is as follows:

84 "DECEMBER 15TH, 1896.

J. Roberts Foulke, Esq., trust officer, Provident Life & Trust Co., Philadelphia, Pa.

DEAR SIR: Your company holds a note of $10,000, signed by Miss Lily Alys Godfrey, dated November 25th, 1895. Will you kindly inform me of the amount of interest due upon this note?
Are you going to be in Washington before long?
Yours very truly,
(S'g'd) B. H. WARNER."

Also letter-press copy of reply, dated December 16th, 1896, as follows:

"DEC. 16TH, 1896.

B. H. Warner, Esq., Washington, D. C.

DEAR SIR: Your favor of the 15th instant is at hand. In connection with the $10,000 loan made to Miss Lily Alys Godfrey on premises situate N. W. cor. New Hampshire Ave. & Q street N. W., Washington, we would state that the six months' interest due 11, 25, 1896, amounting to $300, is still unpaid.
I have no immediate prospect of making a visit to Washington for some time to come.
Very truly yours,
(S'g'd) J. ROBERTS FOULKE,
Trust Officer."

Also letter dated December 17th, 1896, as follows:

"DECEMBER 17TH, 1896.

J. Roberts Foulke, Esq., the Provident Life & Trust Co. of Philadelphia, 409 Chestnut St., Phila., Pa.

DEAR SIR: Your letter is at hand. I want to see you with reference to the property you mention, and if you are coming to Washington Christmas week I will wait until you come; otherwise I may run over and see you before that time. There are some reasons why it may be advantageous to sell out the property on which your loan is secured, and I want to see if some arrangement cannot be made so as to reduce the cost of sale.

Yours very truly,

(S'g'd) B. H. WARNER."

Also answer, dated December 18th. 1896, which is as follows:

"12, 18, 1896.

B. H. Warner, of B. H. Warner and Co., Washington, D. C.

DEAR SIR: Yours of 17th instant is at hand. It is not at all certain that I will be in Washington Xmas week. The matter is only in contemplation. I would be glad to know what method you can suggest forever for reducing the costs of the foreclosure, and remain,

Yours truly,

(S'g'd) J. ROBERTS FOULKE."

* * * * * * *

85 Mr. KEANE: Will you kindly hand those letters to Mr. Darlington for his inspection?

By Mr. DARLINGTON: We object to each and every of these letters as not being evidence, either of the facts recited in them or any other fact or facts, as against the parties that either Mr. Thomas or myself represent, and give notice that I shall move to exclude them on the hearing. I do not object to their being copied in the record so that Mr. Foulke may retain the original.

The three letters above mentioned are offered in evidence and read as follows:

"287 WEST 70TH ST., NEW YORK CITY, *May 25th*, 1896.

Messrs. The Provident Life & Trust Co. of Phila.

DEAR SIRS: I placed your notice in regard to interest on $10,000 mortgage on lots cor. *New* Hampshire Ave. & Q Sts., Washington, D. C., in the hands of the party to whom I have sold the property, S. A. Dutton, 31 Broadway, New York city, and he promised to give the matter immediate attention. I trust you will therefore receive the interest promptly. As I am at the bedside of my daughter, who has been ill unto death with appendicitis & nervous prostration, I cannot see to business matters at present, and have not for many weeks. Therefore should you not have received this interest, please

send a second notice at once to Mr. Dutton, as he believes his agent will settle it promptly, and oblige,

Yours very truly,

(S'g'd) MARY ALICE GODFREY."

"287 W. 70TH ST., *June 9th*, 1896.

J. Roberts Foulke, Esq., trust officer The Provd. Life & Trust Co.

DEAR SIR: I have again notified the owner of the corner of New Hampshire Ave. and Q Sts., W., D. C., that the interest has not yet been paid on the mortgage on the property. Of course, the purchaser assumed the mortgage, and, as I understand your notice to me, you still hold the security of my life insurance for any sum deficient should the property bring less than the loan in case of necessity of foreclosure. I hope you have notified S. A. Dutton, Esq., there must be some mistake through the agent.

I am glad to say my daughter is now convalescent.

Yours very truly,

(S'g'd) MARY ALICE GODFREY."

"5, 28, 1896.

Mrs. Mary Alice Godfrey, 287 West 70th street, N. Y. city.

DEAR MADAM: Yours of 25th instant is at hand, contents noted. I have entered on our books the fact that you have sold the prope: y in Washington to S. A. Dutton, 31 Broadway, New York, but it is necessary to formally notify you (as I do now notify you) that you must not consider any notices we may send to Mr. Dutton
86 or the receipt of any interest from him, as releasing you from the obligation you assumed when you borrowed the money, and that notwithstanding this sale to Mr. Dutton all of the security we have for the debts will be held and maintained for that purpose.

We regret exceedingly to hear of the illness of your daughter, but trust, however, that she is before now very much better, and remain,

Yours truly,

(S'g'd) J. ROBERTS FOULKE,
Trust Officer."

Q. Will you state whether or not you have any knowledge of any subsequent visit, if any, by Mr. Gallivan to the office of the Provident Life & Trust Company?

A. I have no personal knowledge of his coming there a second time.

Q. That was the only occasion which he ever called upon you?

A. That was the only occasion on which he called upon me.

By Mr. DARLINGTON:

Mr. DARLINGTON, cross-examining Mr. FOULKE:

Q. Mr. Foulke, your company is in the habit of sending out interest notices, is it not, as instalments of interest fall due?

A. That is our custom.

Q. Can you tell us to whom those notices have been sent and by whom the interest has been paid since the instalments fell due in May, 1896?

A. I cannot tell to whom notices have been sent, nor can I say who paid the interest. We do not keep copies of notices of interest that are sent out, nor do we keep copies of receipts for interest.

Q. Have either Miss Godfrey or Mrs. Godfrey paid any interest on this mortgage or offered to pay it, so far as you know, since the date of these letters from Mrs. Godfrey which you have produced?

A. To the best of my information, neither of these ladies have paid any interest since the date of the letters.

Q. When did either of them first notify you that they had sold the property on which this mortgage is placed?

Witness looking at letter.

A. To the best of my recollection, we were notified on May 25th, 1896, that the property had been sold to Stephen A. Dutton.

Q. By Mrs. Godfrey's letter of that date?

A. By that letter; yes.

If the notification is in writing and the witness has the writing, its production is called for.

Witness produces letter.

* * * * * * * *

87–118 By Mr. DARLINGTON: One branch of a question I asked you one moment ago has inadvertently failed of answer. I asked you whether Miss Godfrey, Mrs. Godfrey, or any one on their behalf had offered to pay any interest on this mortgage since they notified you, as you say, that they had sold the property.

A. To the best of my recollection they have not. I think that was answered just in that way by me.

* * * * * * *

119 LOUIS W. RICHARDSON, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. KEENE:

Q. Where do you reside, Mr. Richardson?

A. Hyattsville, Prince George county, Maryland.

Q. How old were you in April, 1896?

A. I am 25 now. I was 23.

Q. What is the date of your birth?

A. 23rd of October. You can count back 25 years from the 23rd of this October, 1898.

Q. What was your first employment in business and with whom?

A. With Mr. B. H. Warner & Company.

Q. When did such employment begin?

A. If I am not mistaken, I think it was when I was about 17 years of age or something of that kind; six or seven years ago, perhaps eight. I was with them then for two years; about two.

Q. When did it terminate?

A. I was with them for about two years. I don't remember the exact date.

Q. What salary did you receive when you first went with them, if any?

A. I think it was $20 a month.

Q. Do you remember when you left their employ?

A. I was there for about two years.

Q. What was your next employment?

A. I entered a partnership with Rogers & Rogers, attorneys. They have an office at 338 Indiana avenue, and also one at Hyattsville.

Q. When was that?

A. It has been about two years ago, I guess, 1896.

Q. When did that terminate?

A. I was with them for one year, or it may have been 1895 that I first entered the partnership with them. It was shortly after I left college.

Q. How old were you then?

A. When? When I left college or entered this partnership?

Q. When you made you connection with the firm you speak of?

A. I think I was 22. I would not state positively. I do not remember exactly how old I was when I entered into partnership with them.

Q. Why did you leave them?

A. I had a better opportunity. A better business opportunity offered itself.

Q. What was it?

A. I had a partnership with a man named Carr.

Q. Where?

A. In Hyattsville.

Q. Is that the firm you just spoke of?

A. No, sir.

120 Q. How long did you continue in that connection?

A. I was connected with him in a measure until last Christmas, this last Christmas.

Q. Why did you leave?

A. Why did I leave him?

Q. Yes.

A. I thought I could do better outside by myself.

Q. What did you next do after that?

A. I was with Warner & Company.

Q. When did you resume your connection with Warner & Company?

A. Last summer some time. I forget the exact date. I think it was last summer. It was last March—March a year ago.

Q. In whose employment are you now?

A. B. H. Warner & Company.

Q. Do they pay you a salary?

A. No, sir.

Q. What is the basis of your compensation?

A. Half the commissions I make.

Q. Prior to the tenth of April, 1898, Mr. Richardson, what real estate, if any, did you own in your own right?

A. The tenth of April, 1896?

Q. Prior to the tenth of April, 1896, what real estate, if any, did you own in your own right?

A. Not any.

Q. Prior to the tenth of April, 1896, did you own any money in bank? If so, state in what bank, and how much, to the best of your recollection.

A. If I am not mistaken, I think I had an account with the Second national bank here on Seventh street, Washington city. I don't remember the amount. I couldn't tell that.

Q. About how much?

A. I haven't the remotest idea.

Q. Will you swear that it amounted to $500?

A. No.

Q. Will you swear that it amounted to $250?

A. No; I wouldn't swear to anything of that kind, because, as I told you before, I don't know exactly what amount I had there, and I wouldn't swear to anything of the kind.

Q. Will you swear that it amounted to $100?

A. No. I told you I wouldn't swear to anything of the kind. I don't know.

Q. How much was the value of all your assets on the ninth of April, 1896?

A. I don't know that.

Q. Can you not approximate it?

A. No.

Q. Will you swear that they amounted to $2,000?

A. No.

Q. Will you swear that they amounted to $1,000?

A. No; I would not.

Q. Will you swear that they amounted to $500?

A. No. I don't know. I really can't tell you. I don't know exactly. As in the case of the amount I had in bank, I don't know. I don't know what I had. I don't remember it.

Q. What was the total amount of your debts and liabilities on the ninth of April, 1896?

A. I don't know that.

Q. Were you living with your parents in April, 1896?

A. Yes, sir.

Q. How long had you been living with them?

A. I think—in what way do you mean?

Q. You say you were living with them in April, 1896?

A. Yes, sir.

121 Q. How long had you been living with them in the same way you were living then?

A. In what way do you mean? I do not understand you. You say "the same way I was living then."

Q. You said you were living with your parents in April, 1896?

A. Yes, sir.
Q. Had you been living with them for a year?
A. Do you mean residing in the same house with them?
Q. I do; yes.
A. I had ever since I left college been in the same house with them. I had been with them all my life except the time I spent at college.
Q. Where were you living with them—at what place?
A. Hyattsville. When—in 1896?
Q. In April, 1896.
A. Hyattsville.
Q. And previous thereto?
A. Yes; well, we had lived there for about eight years, I think, or something of that kind—no; about five years.
Q. Did you pay anything for board and lodging?
A. No; I have been the only son, and never have done anything of the kind. It was not necessary.
Q. Do you know Stephen A. Dutton, who executed the deed to you of April 13, 1896, of lots 1, 2, 3, and 66, square 134, Washington, D. C., and the contract of sale of April 10, 1896?
A. Personally, do you mean?
Q. I do.
A. No.
Q. You have never met Stephen A. Dutton personally?
A. I have not that I know of. If I did, I didn't know him as Stephen A. Dutton.
Q. So far as you know, you never met Stephen A. Dutton. Am I right?
A. Yes, sir.
Q. You will swear that you were not present when Stephen A. Dutton signed the contract of sale of April 10th, 1896?
A. I didn't see Stephen A. Dutton on the tenth of April, 1896—no.
Q. Who first spoke to you on the subject of the contract of sale of April 10th, 1896?
A. Who first spoke to me regarding the contract?
Mr. KEENE: Note the pause, Mr. Examiner.
The WITNESS: I don't understand your question.

The question was repeated as follows:

Q. Who first spoke to you on the subject of the contract of sale of April 10th, 1896, which Stephen A. Dutton executed to you, concerning lots 1, 2, 3, and 66, square 134, Washington, D. C.?
A. Mr. Wine, if I am not mistaken.
Q. When?
A. When did he speak to me?
Q. Yes; before or after that contract was signed by Mr. Dutton.
A. I really couldn't tell you that. I don't remember, sir. I don't remember whether it was before or after.
Q. Where?
A. Where?

Q. Yes; where did he speak to you—where did you have your first conversation?

122 A. I think Mr. Wine sent for me or the office sent for me to come in—Warner & Company. As you know, I am a nephew of Mr. Wine, and they wanted me to take a deed for them to this property——

Q. Please answer my question. It is very clear. Read the question to the witness, Mr. Examiner.

The question was read as follows:

Q. Where did he speak to you—where did you have your first conversation?

A. In the office of Warner & Company, I think it was. I am not sure about that. I am not positive.

Q. Who were present?

A. Who were present?

Q. Name every one who was present.

A. I think Mr. Wine spoke to me by himself. I don't think any one was present.

Q. Will you swear that no one else was present but Mr. Wine when he first spoke to you concerning that contract of April 10th, 1896?

Mr. DARLINGTON: I object to the form of these questions, addressed to a witness called by the complainant herself.

Mr. KEENE: I am examining an adverse witness.

Mr. DARLINGTON: And in the absence of any exhibition of reluctance to answer the question.

Mr. KEENE: I submit the question is competent. I am addressing a party defendant and an adverse witness.

A. I do not remember of any one else being present. I could not swear to that, because I do not remember of any one being present. There may have been and there may not.

Q. Can you remember whether it was before or after that contract was signed by Mr. Stephen A. Dutton?

A. I told you I could not.

Q. Did he have the contract with him at the time?

A. Who?

Q. Mr. Wine, when he was talking to you about it.

A. No, sir; not that I remember. I didn't see the contract at the time. I depended upon his word in everything of that kind and his veracity in the matter. So far as that went, it was not necessary for him to have any contract present.

Q. My question was simply as to whether he did or not.

A. I said not to my knowledge.

Q. Who next spoke to you on the subject of the contract of sale of April 10th, 1896?

A. I don't remember of any one else speaking to me in regard to it. I don't remember of any one else. Of course, I presume they did, but I don't remember the event.

Q. Will you swear that no one else ever spoke to you upon that subject?

A. No; I couldn't do that. I wouldn't like to do that.

Q. Will you swear that Mr. Warner never spoke to you upon the subject of the contract of sale of March 10th, 1896?

A. No; I don't remember whether Mr. Warner ever did or not.

Q. Was said contract of sale of April 10th, 1896, ever delivered to you?

A. I don't remember whether it was delivered or not. I
123 saw it. I was there in the office. I often stopped there in the office of Warner & Company to see Mr. Wine.

Q. My question is as to whether it was ever delivered to you or not. Will you please answer that?

A. No.

Q. Was it ever in your possession?

A. No.

Q. Did you ever read it?

A. I was trying to think. I don't remember whether I have seen that contract or not. I was dependent upon Mr. Wine in that, at any rate.

Q. You will swear that you were not present when Mr. Dutton executed the deed to you of April 13th, 1896?

A. Yes.

Q. Who first spoke to you of said deed of April 13th, 1896?

A. Mr. Wine, I think.

Q. Where?

A. I think it was at the office of B. H. Warner & Company.

Q. When?

A. I don't remember the exact date

Q. Was it before or after the deed of April 13th, 1896, was signed by Stephen A. Dutton?

A. I don't remember whether it was before or after.

Q. Who were present?

A. Present when?

Q. When Mr. Wine spoke to you about that deed, as you have testified?

A. Mr. Wine, and I don't remember of any one else being present.

Q. Will you swear that no one else was present?

A. I don't remember whether any one else was present or not?

Q. Did Mr. Wine have the deed with him at the time he was speaking to you about it?

A. I don't remember whether he had it with him. I don't think he did.

Q. Was the deed ever delivered to you?

A. I signed the deed. Was the deed ever delivered to me?

Q. Yes.

A. The office of Warner & Company had the deed. It was not necessary for them to deliver it to me, and it was not delivered to me.

Q. Please answer my question and do not argue. Was the deed ever delivered to you?

A. No.

Q. Did you ever read the deed?
A. I did.
Q. When did you first read the deed?
A. I don't remember.
Q. How long ago to the best of your recollection?
A. It was several years ago, I presume.
Q. Was it before this suit was commenced against you?
A. Oh, yes.
Q. Where did you read it?
A. At the office of Warner & Company.
Q. Who were present?
A. I don't remember just who were present at the time.
Q. Was said deed ever in your possession?
A. It is not in my possession, no.
Q. Was said deed ever in your possession?
A. No.
Q. Who first spoke to you on the subject of said lots as to having the title thereof taken in your name?
A. Mr. Wine.
Q. When?
A. I don't remember the exact time. I don't remember the date.

124 Q. Where?
A. At the office of Warner & Company.
Q. Who were present?
A. Mr. Wine was one who was present. I don't remember of any one else being present.
Q. You swear that no one else was present?
A. I cannot swear that no one else was present. I don't remember.
Q. Did any one else except Mr. Wine ever speak to you on the subject of having the title of said lots taken in your name?
A. I don't think they did.
Q. Will you swear that no one else ever did speak to you on that subject?
A. No. I couldn't swear to that, but I don't think any one else said anything to me.
Q. When and where did you execute the deed dated April 15th, 1896, which purports to convey said lots from you to Warner and Wine?
A. In the office of B. H. Warner & Company. When, I don't remember the date. The deed will show that.
Q. Did you execute it upon the date that it bears?
A. I certainly did.
Q. Why, then, do you say you do not remember the date?
A. It is natural that I would not.
Q. The question is when and where did you execute the deed dated April 15th, 1896?
A. I told you where, at the office of Warner & Company. When, I don't remember the exact date.

Q. Yet you say you executed it upon the date it bears, and that date is April 15th, 1896.

Mr. DARLINGTON: I object. The witness has not said the deed is dated April 15th, 1896; that is in the question of counsel.

Mr. KEENE: I do not think the witness needs any prompting, Mr. Darlington.

Mr. DARLINGTON: No. I do not propose to have him misquoted, either.

Mr. KEENE: The record shows for itself if there is a mistake.

A. To the best of my knowledge, I don't know anything about the April 15th, 1896, but, to the best of my knowledge, that is usually the custom.

Q. Who were present when you executed the deed?

A. The notary was one.

Q. Any one else.

A. I don't remember whether Mr. Warner was there or Mr. Wine. I don't remember whether they were there or not, but the notary was there, and, of course, I acknowledged it before him.

Q. My question is now, state all who were present—every person that you can recollect who was present.

A. There may have been several who were present. The notary was there——

Q. I want you to state from your recollection who were present.

A. The notary, Mr. Gross.

Q. State every person you remember as having been present.

A. Mr. Gross, the notary.

125 & 126 Q. Any one else?

A. I don't remember of any one else. There may have been. I would not say that there were not or that there were.

Q. You have no recollection of any one being present at the time you executed that deed except Mr. Gross?

A. I didn't pay any attention to that at all. Gross is the man I remember.

The question was repeated as follows:

Q. You have no recollection of any one being present at the time you executed that deed except Mr. Gross?

A. I have no recollection of it; no.

Q. At whose request did you execute this deed?

A. At the request of Mr. Wine and Mr. Warner, if I am not mistaken.

Q. Where were you when they made that request?

A. At their office, 916 F street.

Q. How long was the request made before you executed the deed?

A. It was done the same day.

Q. Who were present when they made the request?

A. I don't remember who were present except the gentlemen I mentioned—Mr. Wine and Mr. Warner.

Q. What did you do with said deed after you had executed it—to whom did you deliver it?

A. The notary public. He took charge of it. Gross is his name.

Q. And no one but the notary and Mr. Warner and Mr. Wine were present?

A. I don't remember of any one else, I said.

Q. When did you next see that deed, after you gave it to the notary?

A. I don't remember seeing it since at all. I don't think I have seen it since.

Q. Did you say anything to the notary when you gave it to him?

A. I acknowledged it.

Q. You simply acknowledged it?

A. I don't remember making any comment upon it; no.

Q. You had no conversation about it?

A. None that I can remember.

Q. Who first spoke to you on the subject of executing said deed of April 15th, 1896, purporting to convey said property, lots 1, 2, 3, and 66, square 134, Washington, D. C., from you to B. H. Warner and Louis D. Wine?

A. I don't remember whether it was Mr. Wine or Mr. Warner. If I am not mistaken, I think Mr. Wine did.

Q. How many conversations did you have with Mr. Wine on the subject?

A. One. I may have had several conversations; I don't remember; but one was all that was necessary.

Q. My question was how many did you have?

A. I don't remember but one.

Q. When?

A. The day it was executed.

Q. Is that the same conversation when the request was made to you to execute it?

A. The same conversation; yes.

* * * * * * *

127 Q. When this suit was commenced against you, did you not inform your uncle Wine or B. H. Warner or both of the fact that you had been sued without delay?

A. No; I did not.

Q. Do you understand the question?

A. Yes; no, I did not inform them.

Q. Who did inform them?

A. Of the suit against me?

Q. Yes.

128 A. I am not aware. I presume they saw it in the papers or something of that kind; I think it came out in the "Post;" that was the first intimation I had of it; it was sent to me.

Q. Where were you when you received it?

A. At Hyattsville.

Q. What was sent to you?

A. The article or the matter of the suit: it was in the "Post," I think, if I am not mistaken; printed in the "Post."

Q. That was the way you learned it?

A. Yes.

Q. How long after you learned it was it before you had a conversation with your uncle Wine or B. H. Warner on the subject?

A. Within a day or so; I think the next day; perhaps the same day or the next one.

Q. Whereabouts?

A. With Mr. Wine at his office.

Q. And with Mr. Warner?

A. I don't remember of Mr. Warner being there.

Q. When did you first have a conversation with Mr. Warner on the subject of this suit?

A. I don't remember when I talked with him.

Q. Did you state where your conversation was with Mr. Wine?

A. At the office of Warner & Company.

Q. Will you name every person who was present when you had that conversation with Mr. Wine?

A. There were several in the room. Mr. Rheam was in the room, I think, but he knew nothing of the conversation. I was speaking privately to Mr. Wine.

Q. My question is to state the names of all the people who were present at the time you were having that conversation with Mr. Wine.

A. I don't remember who were in the room at the time. It was back in the office. I didn't pay any attention to them.

Q. What did you say to Mr. Wine, and what did he say to you?

A. I can hardly remember the conversation, Mr. Keene.

Q. Is your mind a total blank?

A. Not entirely. I remember laughing over it. I thought it was ridiculous.

Q. You thought the suit was ridiculous?

A. Yes.

Q. You said that to him, did you?

A. I don't remember saying that to him; no. I say I thought that. I don't remember exactly what I said.

Q. Why can you not answer my question?

A. Because I don't remember——

Q. I ask you to state what you said to Mr. Wine, and what he said to you.

A. I remember what he said to me, in a laughing manner. He said: Well, I see you are sued; but I think I laughed in return.

Q. And that is all you can recollect of that conversation?

A. That is all. I don't remember saying anything.

Q. How long did that conversation occupy?

A. What length of time did it occupy?

Q. Yes; during the time you conversed on the subject of this suit?

A. A very short time, I think.

Q. How many minutes?

A. I could not specify that. I could not tell.

Q. Did it occupy ten minutes?

A. I think not.

129 Q. Did it occupy five minutes?

A. It may possibly. I don't remember exactly how many minutes it occupied.

Q. That is all you can recollect of the conversation between you and him on the subject? Note the pause, Mr. Examiner.

A. I was trying to think. I don't remember of anything else; no. I can't recall just at this time.

Q. When did you have your next conversation with him on the subject?

A. I had a number of conversations with him.

Q. When did you have your next conversation with him on the subject?

A. I don't remember the date.

Q. How long afterwards, about?

A. I couldn't tell you that.

Q. Where did you have your next conversation?

A. I don't know.

Q. Who were present when you had your next conversation?

A. I can hardly tell, if I could not tell where.

Q. Who were present at any of the conversations that you had with Mr. Wine on the subject of this suit? Name all the persons you can think of.

A. I told you I had several conversations, and I don't remember——

Q. Please answer my question.

A. Remember who were present at every conversation we had?

Q. All the persons you can think of who were ever present at any conversation you ever had with Mr. Wine when this suit was the subject of conversation.

A. I remember once Mr. Rheam was present, and Mr. Warner was present at one time, and I think there was a man named Phillips present. He was at that time in the office of Warner & Company, I believe.

Q. Was a man named E. H. Thomas present; was such a man ever present?

A. When I first had the conversation?

Q. No; when you ever had a conversation. I ask you to state the names of all the persons you can recollect that were ever present at any of the conversations that you had with Mr. Wm. Wine.

Q. Any conversations?

Q. Any conversations that you had with Mr. Wine when this suit was the subject of the conversation.

A. Yes, indeed. Mr. Thomas had been present very often.

Q. The defence of the suit was a matter, was it not, which chiefly concerned the said B. H. Warner and your uncle Wine as the purchasers of the property, and not yourself as a mere person in whose name the property stood for convenience?

A. What is the first of that?

Q. The defence of the suit was a matter, was it not, which chiefly concerned the said B. H. Warner and your uncle Wine as the purchasers of the property, and not yourself as a mere person in whose

name the property stood for their convenience; do you understand the question?

A. Yes.

Q. Was not the defence of this suit a matter which chiefly concerned B. H. Warner and your uncle Wine and not you?

A. Certainly.

Q. Knowing the defence of the suit concerned said B. H. Warner and your uncle Wine as the purchasers and real parties in
130 interest, did you not regard it as their duty to save you from any expenses in connection with the suit for counsel fees and other necessary disbursements?

A. Yes.

Q. If you have paid any of the expenses for counsel's fees or other disbursements, please state where you made such payments, whether you made such payments by check or in cash.

A. I have not paid for any of the expenses on account of this suit.

Q. When did you first see Mr. E. H. Thomas in connection with this suit?

Mr. DARLINGTON: I invite the attention of the court to the impropriety of this question, inquiring into relations between the defendant and his counsel. I should not do so if Mr. Thomas were here, because I think it likely he would waive any objection; but as he is not here I make that suggestion on the record.

Mr. KEENE: I shall be very careful not to trespass upon the delicate ground of professional confidence, to which it certainly is unnecessary that my attention should be called. I ask the witness to answer the question, therefore, as being perfectly competent and proper.

By Mr. KEENE:

Q. When did you first see Mr. E. H. Thomas in connection with this suit?

A. What date, do you mean?

Q. Yes.

A. I don't remember.

Q. How long after you first learned that this suit was commenced against you was it before you first saw Mr. E. H. Thomas?

A. I don't remember that.

Q. About how long was it, to the best of your recollection?

A. I told you, Mr. Keene, that I did not remember it. I don't know; it may have been a short time and it may have been some length of time.

Q. Will you swear that you saw Mr. Thomas within a week after this suit was commenced against you?

A. I could hardly do that.

Q. Will you swear that you saw Mr. Thomas within two weeks after this suit was commenced against you?

A. No; I don't remember, as I told you.

Q. Will you swear that you saw Mr. Thomas within a month after this suit was commenced against you on the subject of this suit?

A. No.

Q. Will you swear that you saw Mr. Thomas on the subject of this suit within two months after this suit was commenced against you?

A. I have the impression it is a much shorter time than that, but I would not swear to it. No; I don't remember exactly just when it was.

Q. Where was it?

A. Where was what?

Q. That you first saw Mr. Thomas on the subject of this suit so as to have any conversation with him on the subject.

A. I don't remember my first conversation with Mr. Thomas.

131 Q. I ask you where it was that you first saw him after the commencement of this suit to have any conversation with him.

A. It was either at Warner's office or at his office; I am not sure which. I am not positive in regard to it.

Q. Who were present when you first saw Mr. Thomas?

A. I know that Mr. Wine was present wherever I saw him.

Q. Wherever you saw Mr. Thomas?

A. Yes; wherever I saw him. It was either in his office or down in Warner's office.

Q. Mr. Wine was always present?

A. Always present? No; I didn't say that. He was present at the first conversation we had in relation to the subject.

Q. Is there anything else that makes you especially remember that?

A. Oh, no; except that it would be natural that Mr. Wine should be present.

Q. Who else was present?

A. I don't remember of any one else being present.

Q. How long was it after the commencement of this suit before you had an interview or conversation with Mr. Thomas on the subject in his office?

A. In his office?

Q. Yes.

A. I could not specify the time; I couldn't do it. I do not know. I don't remember it—I don't remember the exact time. I wouldn't attempt to do that. I wouldn't swear to it.

Q. Do you remember the conversation that you first had with Mr. Thomas in his office on the subject of this suit after this suit was commenced against you?

A. No.

Q. You do not?

A. No.

Q. Do you remember who were present?

A. This much I remember of——

Q. Do you remember who were present?

A. Mr. Wine.

Q. Any one else?

A. I don't remember of any one else.

Q. Was Mr. B. H. Warner ever present at any interview you ever had on the subject of this suit with Mr. E. H. Thomas?

A. Yes.

Q. How many interview- had you with Mr. E. H. Thomas on the subject of this suit previous to the time when you swore to your answer to the original complaint, November 30th, 1896?

A. I had quite a number. I could not specify the exact number, though.

Q. Can you approximate?

A. No.

Q. Did you ever have a conversation with Mr. Thomas in his office on the subject of this suit at which Mr. B. H. Warner or your uncle Wine was not present?

A. Yes.

Q. How many?

A. I don't remember that.

Q. Was not either Mr. Warner or Mr. Wine or both generally present at interviews that you had with Mr. E. H. Thomas?

A. Yes.

Q. In whose office or in what place were you when you swore to your answer to the original complaint?

A. In the office of B. H. Warner & Company.

Q. Who were present?

A. The notary was there, Gross, and, I think—I would not swear to it, though—that Mr. Wine was there.

Q. Was Mr. Warner there also? Would you swear he was
132 not there, too?

A. I don't remember whether Mr. Warner was there when I swore to the original bill or not; I don't remember that.

Q. You will not swear that he was not there?

A. No; I wouldn't swear that he was.

Q. Before swearing to your answer to the original complaint did you read the answer and understand its contents?

A. Why, certainly.

Q. Knowing that said B. H. Warner and your uncle Wine were the purchasers of the said property from Stephen A. Dutton, what was your motive in swearing that you were the purchaser and concealing their connection as purchasers and real parties in interest?

A. My attorney advised me in the matter.

Q. What was your motive in swearing that you had parted with value when your only connection with the transaction consisted in allowing the use of your name to B. H. Warner and your uncle Wine for their convenience?

A. My attorney advised me; I was acting under his instruction.

Q. Knowing that you had not parted with anything and had simply permitted the deed to be taken in your name, why did you not so state in your answer and reveal the connection of B. H. Warner and your uncle Wine as the real purchasers?

A. My attorney's advice.

Q. Had you no motive in concealing in your answer that B. H. Warner and your uncle Wine were the purchasers and real parties in interest?

A. My attorney's advice in the matter—I took it entirely, sir.

Q. How do you reconcile your statement in your answer to the

original bill that you had parted with value and purchased the property through your brokers, B. H. Warner & Company, with your statement in your answer to the amended and supplemental bill, namely, that you had never pretended or intended to claim that you had paid any part of the consideration?

A. I followed my attorney's advice in those things entirely.

Q. Can you reconcile those two statements?

A. I told you I followed my attorney's advice entirely.

Q. I ask you, can you reconcile those two statements?

A. Which two statements?

Q. I will have the question read over again.

The question was read as follows:

Q. How do you reconcile your statement in your answer to the original bill that you had parted with value and purchased the property through your brokers, B. H. Warner & Company, with your statement in your answer to the amended and supplemental bill, namely, that you had never pretended or intended to claim that you had paid any part of the consideration?

A. My answer to that is that I followed my attorney's advice.

Q. What was your motive in not stating in your original answer that you had executed a deed of said lots to B. H. Warner and your uncle Wine at or about the time when the said lots were put in your name for their convenience?

A. Again I followed my attorney's advice.

133 Q. Is it not a fact that B. H. Warner and your uncle Wine, being the purchasers and real parties in interest, were defending the suit in your name?

A. Yes.

Q. Will you swear that neither B. H. Warner nor your uncle ever saw Mr. Thomas in connection with this suit?

A. Why, no; I couldn't swear that.

Q. You have already testified that they saw Mr. Thomas quite frequently, have you not?

A. That Mr. Wine and Mr. Warner saw Thomas quite frequently?

Q. On the subject of this suit.

A. I said they had, in my presence.

Q. When did you first learn that Mr. Thomas was engaged to defend this suit?

A. I don't remember when.

Q. From whom did you first learn that?

A. From Mr. Wine,

Q. Where were you at the time?

A. I don't remember exactly where.

Q. Who were present?

A. I don't remember who were present.

Q. State what he said to you and what you said to him.

A. What Mr. Thomas said to me?

Q. No; what Mr. Wine said to you. You have just stated that you first learned that Mr. Thomas had been engaged to defend this suit for Mr. Wine.

A. Yes.

Q. Now, I ask you to state what he said to you and what you said to him at the time you were informed by him, as you have testified, that Mr. Thomas was engaged to defend this suit.

A. I remember Mr. Wine telling me that Mr. Thomas was the attorney in the case, employed as attorney. In further conversation—it was matter to that point, at any rate. I don't remember the exact words used, but it had that meaning.

Q. Did he say to you who had engaged Mr. Thomas' services for that purpose?

A. I don't remember whether he stated to me who had engaged them or not.

Q. Did he state to you whether he or Mr. Warner had engaged Mr. Thomas?

A. He may have done that; I don't remember.

Q. Would you swear that he did not so state to you?

A. Oh, no.

Q. Is it not a fact that your motive in swearing in your answer to the original complaint in this suit that you were the purchaser of said lots, that you had parted with value, that you had made said purchase through your real-estate brokers, B. H. Warner & Company, and that they had deposited $7,083.33 for and on your behalf, and in concealing the connection of B. H. Warner and your uncle Wine as the purchasers and real parties in interest, was because they had full knowledge of and approved the making by you of said answer? Is not that true?

A. I took my attorney's advice on that point.

Q. Do you swear that neither B. H. Warner nor your uncle Wine knew the contents of your answer to the original bill prior to the time the same was filed in court in this suit?

A. No; I don't swear that they had no knowledge of that.

Q. Is it not a fact that they did have knowledge of it?

A. Yes; they had knowledge of it.

134 Cross-examination:

* * * * * * *

Q. You have said that you think Messrs. Wine and Warner requested you to execute the deed to them which you did execute in April, 1896?

A. Yes, sir.

Q. Do you think both Mr. Wine and Mr. Warner spoke to you about it?

Mr. KEENE: Objected to as leading and exceedingly improper.

A. I think Mr. Wine spoke to me. What is the question, again?

Q. I ask you whether you remembered that Mr. Warner and Mr. Wine both spoke to you about it.

A. Yes; I think they did. I know Mr. Wine did, and I think Mr. Warner did.

135 & 136 Q. You said that after acknowledging this deed you left it with the notary.

A. Yes, sir.

Q. For what purpose?

A. He usually takes care of those things. After it was executed I left it, in all probability, to give to Mr. Wine or Mr. Warner to take care of. He takes care of those papers.

Q. That is, Mr. Gross is in the habit of taking care of these papers?

A. Yes; he puts them in the safe or has them sent down to the record office.

Q. You were asked whether you were ever given or promised anything for the use of your name in this matter, and you answered that you were never promised anything.

A. No.

Q. Please state whether you were ever given anything.

A. I was never given anything.

Q. Did I correctly understand that you never knew anything about this suit until it had actually been brought and you saw it in the newspapers?

A. That is the first intimation I had of the suit. I had been away and returned, and the first intimation I had, I think, was the day after I returned.

Q. No communication was addressed to you by counsel for complainant?

* * * * * * *

By Mr. DARLINGTON:

Q. No communication was addressed to you by counsel for complainant before the suit was filed?

A. No; I don't remember of any.

* * * * * * *

137 Q. You were asked on your direct examination whether you had any motive in concealing in your answer the interest of Messrs. Warner and Wine in the transaction, and you answered that you executed the answer under the advice of your counsel?

A. Yes, sir.

Q. Had you any motive in the matter?

A. I had no motive except following the advice of the attorney.

Q. You were also asked whether there was any motive on your part in not mentioning this deed which you executed to Messrs. Wine and Warner in April, 1896. If you had any motive in not doing so, please state it.

A. I had no motive except following the advice of my attorney, which, being implicated, I thought it was the proper thing I should do.

Q. You have said Messrs. Wine and Warner had knowledge of the contents of that answer before it was filed. How do you know that?

A. Why, Mr. Wine, I know, had read it and knew of the contents.

Q. How about Mr. Warner?

A. Mr. Warner, I think, had read the paper.

Q. What makes you think so?

A. I know that Mr. Wine read it.

Q. Why do you think Mr. Warner read it?

A. About Mr. Warner—I am not quite certain about that. To the best of my belief——

Q. If you have any reason for thinking Mr. Warner read it, state it.

A. I knew that Mr. Wine and Mr. Warner were connected in that matter, and I felt pretty sure if one read it the other would.

Q. Was it upon that basis only that you said you thought Mr. Warner knew its contents?

A. No; I think I had some conversation with Mr. Warner about it.

Q. If you do, please state what the conversation was and when and where.

A. I don't remember just what it was, but I think I had a talk with Mr. Warner about the statement I swore to.

Q. When did this interview take place?

A. Shortly after I had signed the paper.

Q. And not before?

A. No.

138 & 139 Q. Was it before or after some question began to be made about the correctness of that answer?

A. That was before any question had been made in regard to the correctness of it.

Q. Please state the conversation as nearly as you can recollect.

A. Between Mr. Warner and myself?

Q. Yes.

A. I don't remember just what the conversation was. I remember telling Mr. Warner about swearing. We talked over the matter. I said I had sworn to the statement in regard to the property, but I do not remember the exact conversation nor what passed.

Q. I wish you would give the substance of it as nearly as you can; just what you said to Mr. Warner and what he said to you, if anything.

A. I don't remember just exactly what it was. I remember talking to Mr. Warner about it, but I really do not recall the words used in the conversation.

Q. Had you any conversation with him about it before you signed it?

A. Before I signed the paper?

Q. Yes.

A. No, sir.

Q. Had you any conversation with Mr. Wine before you signed and swore to it?

A. Yes.

Q. State fully what that was.

A. I said to Mr. Wine, This paper is all right. I said, To your knowledge, in your opinion, is this paper all right, and I think he said yes. He said, Mr. Thomas prepared that paper, and Mr. Thomas knows what he is doing.

Q. That was your conversation with him?

A. That is all the conversation I had in regard to it.

Q. What suggestion, if any, was ever made to you by either Mr. Warner or Mr. Wine that you conceal anything in the matter?

A. Suggestion made by them that I conceal anything?

Q. Yes.

A. They never have made any suggestion that I conceal anything.

* * * * * * *

140 This indenture, made this fifteenth (15th) day of April, in the year of our Lord one thousand eight hundred and ninety-six, by and between Louis W. Wichardson (unmarried) of Hyattsville, Maryland, of the first part, and Brainard H. Warner of Kensington, Maryland, and Louis D. Wine, of the city of Washington, D. C., parties of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of one hundred ($100) dollars, in lawful money of the United States, to him in hand paid by the said parties of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, aliened, enfoeffed, released, and conveyed, and doth by these presents grant, bargain, and sell, alien, enfeoff, release and convey unto the said parties of the second part, their heirs and assigns, forever, as tenants in common and not as joint tenants the following-described real estate situate in the city of Washington, District of Columbia, to wit: All those certain pieces or parcels of land and premises known and distinguished as and being:

Lots numbered one (1), two (2), three (3) and sixty-six (66) in A. P. Fardon and others' subdivision of square numbered one hundred and thirty-four (134) as said subdivision is recorded in the office of the surveyor of the District of Columbia, subject to three deeds of trust dated respectively December 10th, 1891, (for $3,500), July 31st, 1894 (for $4,000) and November 25th, 1895 (for $10,000) which the said parties of the second part agree to assume and pay.

Together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging, or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof; and all estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said party of the first part, of, in, to, or out of the said pieces or parcels of land and premises:

141 To have and to hold the said pieces or parcels of land and premises with the appurtenances, into the said parties of the second part, their heirs and assigns, to their sole use, benefit, and behoof, forever as tenants in common and not as joint tenants.

And the said party of the first part for himself and for his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said parties of the second part, their heirs and assigns, that he the said party of the first part, and his heirs shall and will warrant and forever defend the said pieces or parcels of land and premises and appurtenances, unto the said parties of the second part, their heirs and assigns, from and against the claims of

all persons claiming or to claim the same, or any part thereof, by, from, under, or through him the said party of the first part excepting as to the encumbrances aforesaid.

And the said party of the first part further covenants, promises and agrees, to and with the said parties of the second part, that he, the said party of the first part, and his heirs, shall and will at any and at all times hereafter, upon the request and at the cost of the said parties of the second part, their heirs or assigns, make, execute, deliver, and acknowledge all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances, unto the said parties of the second part, their heirs or assigns, as the said parties of the second part, their heirs or assigns, or their counsel learned in law shall advise, devise, or require.

In testimony whereof, the said party of the first part, hath hereunto set his hand and seal on the day and year first hereinbefore written.

LOUIS W. RICHARDSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
HENRY J. GROSS.

DISTRICT OF COLUMBIA, *ss*:

I, Henry J. Gross, a notary public in and for the District aforesaid, do hereby certify that Louis W. Richardson (unmarried) of Hyattsville, Md., party to a certain deed bearing date on the 15th day of April, A. D. 1896, and hereunto annexed, personally appeared before me, in the District aforesaid, the said Louis W. Richardson being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this sixteenth (16th) day of April, A. D. 1896.

HENRY J. GROSS,
[SEAL.] *Notary Public.*

Pursuant to the same *subpœna duces tecum* the defendants also produce for inspection the deed from Stephen A. Dutton
142 and Cora M. Dutton to Louis W. Richardson, dated the thirteenth day of April, 1896, which was submitted to Mr. Keane, counsel for the complainant; signed, sealed, and delivered in the presence of John D. Coughlan, notary public, on the thirteenth day of April, 1896.

Mr. DARLINGTON: These deeds would have been produced on notice without a *subpœna duces tecum*, and we cheerfully agree that they may be copied into the record by the examiner and made a part of it.

Deed last referred to is marked for identification "Richardson deed, R. L. M., examiner," and is as follows:

This indenture, made this thirteenth day of April, in the year of our Lord one thousand eight hundred and ninety-six, by and between Stephen A. Dutton and Cora M. Dutton, his wife, of the city and State of New York, but temporarily in the District of Columbia, parties of the first part, and Louis W. Richardson of Hyattsville, in the State of Maryland, party of the second part:

Witnesseth, that the said parties of the first part, for and in consideration of ten dollars, lawful money of the United States of America, to them in hand paid by the party of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the party of the second part, his heirs and assigns forever, the following-described land and premises, situate, lying and being in the city of Washington, in District of Columbia, and distinguished as and being lots numbered one (1), two (2), three (3) and sixty-six (66) in A. P. Fardon and others' subdivision of square numbered one hundred and thirty-four (134) as said subdivision is recorded in the office of the surveyor of the District of Columbia in Book R. W., page 5, said lots being hereby conveyed, subject to three certain deeds of trust recorded among the land records of the District of Columbia, one of said deeds of trust being on the said lots one (1) and sixty-six (66) and being recorded in Liber No. 2076, folio 183 and securing payment of the principal debt of $10,000, with interest thereon—another of said deeds of trust being on said lot two (2) and being recorded in Liber No. 1647, folio 13, and securing the payment of the principal debt of $3,500 with interest thereon, and the other of said deeds of trust being on said lot three (3) and being recorded in Liber No. 1948, folio 67 and securing the payment of the principal debt of $4,000 with interest thereon, to which deeds of trust reference is here made for a more particular description of the debts thereby intended to be secured, together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the parties of the first part, of, in, to or out of the said land and premises:

143 To have and to hold the said land, premises and appurtenances, unto and to the only use of the party of the second part, his heirs and assigns forever.

And the said Stephen A. Dutton, his heirs, executors and administrators, do hereby covenant and agree to and with the party of the second part, his heirs and assigns, that they the parties of the first part and their heirs shall and will warrant and forever defend the said land and premises and appurtenances unto the party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, or interest therein, by, from, under or through —.

And further, that the parties of the first part and their heirs shall and will at any and all times hereafter, upon the request and at the

cost of the party of the second part, his heirs and assigns, make and execute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the party of the second part, his heirs or assigns, as the party of the second part, his heirs or assigns, or his or their counsel learned in the law shall advise, devise or require.

In testimony whereof, the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

STEPHEN A. DUTTON. [SEAL.]
CORA M. DUTTON. [SEAL.]

Signed, sealed and delivered in the presence of—
ELLEN S. MUSSEY.

DISTRICT OF COLUMBIA, *To wit:*

I, John D. Coughlan, a notary public in and for the said District of Columbia, do hereby certify that Stephen A. Dutton and Cora M. Dutton, his wife, parties to a certain deed bearing date on the thirteenth day of April, A. D. 1896, and hereunto annexed, personally appeared before me, in the said District of Columbia, the said Stephen A. Dutton and Cora M. Dutton, his wife, being personally well known to me as the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Cora M. Dutton, wife of Stephen A. Dutton, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed and declared that she willingly signed, sealed, and delivered the same, and that she wishes not to retract it.

Given under my hand and official seal this 13 day of April, A. D. 1896.

J. D. COUGHLAN,
Notary Public.

144 EDGAR B. BERRY, a witness produced on behalf of the complainant, being first duly sworn, was examined and testified as follows:

By Mr. KEANE:

Q. What is your occupation?

A. I am cashier of the Farmers' and Mechanics' National Bank of Georgetown.

Q. And what is your residence?

A. 3058 U street northwest.

Q. How long have you resided there?

A. Very nearly seven years.

Q. How long have you been the cashier of the Farmers' and Mechanics' National Bank of Georgetown?

A. Just about the same time—about seven years—very nearly seven years.

Q. Do the books of your bank contain any record or entries in regard to a certain note of Louis D. Wine for the sum of $7,200, endorsed by Brainard H. Warner and discounted on the 13th day of April, 1896?

A. Yes, sir.

Q. Will you state what entries are contained in the books of your bank on that subject?

A. On the 14th day of April, 1896, we discounted a note for Mr. Wine, with the endorsement of B. H. Warner, for two months, for $7,200 and interest. Now, the amount that went to Mr. Wine's credit on that day was $7,200. That note became due on the 16th day of June, 1896, and was paid on that day by a check against Mr. Wine's account for $6,700 and either money or checks on other banks for $575. Now, you see that the amount of that note on that day, interest and all, was $7,275.60. The $6,700 and $575.60 will amount to $7,275.60. That cleaned that note up. Then we renewed that note for him——

Q. When did you renew it?

A. June 16, 1896.

Q. For what amount?

A. For $6,700. That note came due on August 19, 1896, and amounted, interest and all, to $6,770.35. That note then was paid by a check of Mr. Wine for $6,300.

Q. Any endorsement?

A. It was the same note; it was a renewal of the note. That was paid by check of Mr. Wine for $6,300.

Q. Please specify the endorsement so as to get it on the record.

A. All these notes were endorsed by B. H. Warner. As I say, that was paid by a check of Mr. Wine for $6,300 and checks on other banks or cash of $470.35. Then those two amounts made the $6,770.35, the amount that note amounted to on the day it was due, August 19. On August 19 he renewed the note again and we discounted it——

Q. For how much?

A. We discounted the note for him then for $6,300.

By Mr. DARLINGTON:

Q. Was there a curtail?

145–147 A. There was a curtail on that note. We renewed the note for $6,300; it was $6,700, and we renewed it for $6,300, and there is where his check came from. Now, that note, with the endorsement of B. H. Warner, which was for two months, fell due October 22, 1896, and on that day it amounted to $6,366.15.

Q. With interest?

A. Yes, sir; with interest. Now, that was paid by a check of Mr. Wine for $6,000.

By Mr. KEANE:

Q. Endorsed by Mr. Warner?

A. Yes, sir; it is the same note for $6,000, and either checks on

other banks or money for $366.15. On October 22 we renewed that note the same day it was due, with grace added for $6,000. That note came due December 26, 1896, and amounted to $6,063; that was paid by check of Mr. Wine for $6,063. On December 26 we renewed it again the same day that the old note was paid, $6,000.

By Mr. DARLINGTON:

Q. No curtail that time?

A. No curtail that time. It was endorsed by B. H. Warner and it fell due March 1, 1897. On March 1, 1897, it amounted to $6,063. That was paid by a check of Mr. Wine for $6,063. The note was endorsed by Mr. Warner.

By Mr. KEANE:

Q. How was it endorsed?

A. It was endorsed—that is, the note was endorsed—by Mr. Warner. I do not know how the check was endorsed. It was not necessary, because it was on our own bank. I do not know that the check was endorsed at all. I cannot tell you anything about these checks except they were Mr. Wine's checks. Then we renewed the note on March 1 for $5,700, that same note with Mr. Warner's endorsement on it. Mr. Wine paid a curtail that time of $300. That note of $5,700 and interest fell due June 1, 1897; that was paid by a check of Mr. Wine for $5,785.50; that was the amount of the note, and Mr. Wine paid the whole amount of the note with his check on our bank for $5,785.50. We renewed that note on March 1 for $5,700, the same note with Mr. Warner's endorsement, and that fell due June 1, 1897. Now, we renewed that note again June 1 for $5,700. That note fell due July 31, 1897, and amounted at that date to $5,785.50. It was paid by a check of Mr. Wine for $5,785.58. After he had paid that note we renewed this note again for him July 31 for $5,600, the same note endorsed by Mr. Warner; that note fell due October 30, 1897. Now, that was paid by apparently two checks on the Columbia bank for $5,684. I do not know whose checks they were; I cannot tell you now; we got two checks. A little copy that I made from the teller's book the next morning showed we had two checks on the Columbia bank for $5,684.

Q. What were the respective amounts of the two checks?

A. $5,400 and $284. That made the $5,684.

* * * * * * *

148 Cross-examination.

By Mr. DARLINGTON:

Q. How long have you known Mr. Wine?

A. I could hardly tell you that. I have known of him ever since about the time of the war.

Q. How long have you known Mr. Warner?

A. I have not known Mr. Warner as long as I have known Mr. Wine. I have known Mr. Warner a long time by reputation, and I

gradually slid into a personal acquaintance with him. When that commenced I cannot tell you, but I have known of him a great many years. Although I have seen him and have known of him for a great many years, it would be almost impossible for me to tell when I met him the first time.

Q. Do you know the financial and business standing of these gentlemen in the community?

Mr. WILSON: Question objected to on the ground that it is not proper cross-examination nor responsive to any question that has been asked on the examination-in-chief.

A. Yes, sir. I think I do.

Q. For how long have you known it?

A. For at least ten or fifteen years, anyway.

Q. Please tell us whether there was anything unusual in your bank discounting notes endorsed by men of their standing.

A. None in the world.

Q. What, if anything, was there unusual about this entire transaction from start to finish?

A. Nothing unusual.

Q. When these several notes were successively paid off in the manner you have described, what became of them?

A. I don't know.

Q. I mean so far as your bank was concerned.

A. They were passed out through the window in the usual way that notes are.

Q. Surrendered to the parties who paid them?

A. Yes, sir. I cannot tell you who paid them.

Redirect examination.

By Mr. WILSON:

Q. You say there was nothing unusual in the transaction. You mean by that, I suppose, it was a transaction that went through your bank just like any other ordinary transaction where money was borrowed, notes given, payments made, and so forth?

A. Yes, sir; that is it.

EDGAR P. BERRY.

Sworn to and subscribed before me this 17th day of February, A. D. 1898.

ROB'T L. MILLER, *Examiner.*

* * * * * * *

149 JOHN B. WIGHT, a witness produced on behalf of the complainant, being first duly sworn, was examined, and testified as follows:

By Mr. KEANE:

Q. Where do you reside?

A. Washington, D. C.

Q. How long have you lived here?

A. Since my birth, in 1853.

Q. What is your occupation?

A. At present?

Q. At present.

A. Commissioner of the District of Columbia.

Q. How long have you held that office?

A. Since May, 1897.

Q. In what business were you engaged before you were appointed Commissioner of the District of Columbia?

A. Real estate and insurance.

Q. How long have you been engaged in that business?

A. From February, 1890, to May, 1897.

Q. And while you were engaged in that business did you buy and sell real estate here in the District as a broker?

A. Yes, sir.

Q. And did you make yourself familiar with the value of real estate?

A. I endeavored to do so; yes, sir.

Q. And you are familiar with the value of real estate in the District of Columbia?

A. Somewhat; yes, sir.

Q. Have you as a broker appraised real estate?

A. I have at times; yes, sir.

Q. Are you familiar with lots 1, 2, 3, and 66, square 134, in the District of Columbia?

A. If those are the lots on the northwest corner of New Hampshire avenue and Q streets, I am familiar with that property. I do not recall them by numbers.

Q. What was the value of that property in the month of April, 1896, in your opinion?

A. I estimated that the property at that time was worth $50,000. That was my opinion as to its value.

Q. And what is your opinion now as to the value of that property at that time?

A. I am of the same opinion.

Q. Do you recollect having a conversation at your house about the 10th of April, 1896, in regard to that property with Mr. L. D. Wine?

A. Yes; I recall having a conversation with Mr. Wine about that time. I am not absolutely certain as to the date, but it was in that vicinity; about that time.

Q. Where was the conversation?

A. In my house.

Q. State what Mr. Wine said to you and what you said to him.

A. As nearly as I can recall it, Mr. Wine asked me if I knew that corner, what my opinion was as to its value, and stated that he had an opportunity to purchase it; that it had been offered to him at a certain price, and that he was considering buying it, and asked me as to my opinion in regard to its value, and as nearly as I can recall the conversation I told him I thought it was worth $50,000, and I think I stated to him the circumstances which had led me to place

the value upon it; that I had been engaged for the sale of it; that I had offered it to a certain party whom I had tried to interest in the property, and in that way had had my attention drawn to the property and had placed that valuation upon it. I think that is the substance of the conversation.

150 Q. And did you state to him the circumstances that led you to place that valuation upon that property?

A. I think I just stated that I thought I may have done so.

Q. Please state those circumstances.

A. I may have said to Mr. Wine—I am not sure I did—I may have said to him at that time that the reason I had a valuation in my mind of that amount was because I had had certain negotiations regarding it in my efforts to sell it to a certain individual.

Q. What did Mr. Wine say?

A. I do not recall that Mr. Wine expressed himself in regard to my opinion as to the value of the property. The conversation was very brief, and he stated, after asking me what my opinion of the property was, that he had had it offered to him for a certain amount and was considering whether he would purchase it or not.

Q. Did he mention what amount he had it offered to him?

A. I think he did.

Q. What was it?

A. I think the price was $25,000.

Q. Was anything said by Mr. Wine in regard to the circumstances that had brought him this opportunity of which he spoke to you of being able to purchase this property for $25,000?

A. I do not recall that there was. Mr. Wine, as I recollect the transaction, said that Mrs. Mussey had offered him the property for that sum, and that it was to hold good—that is, the offer was—for three days, but as to any other circumstances or reasons for offering the property at that price I do not recall that anything was said.

Q. Do you recollect meeting Mr. Warner about the same time?

A. In connection with that property?

Q. Yes; and having a conversation with him in regard to that?

A. Yes, sir; I cannot state the date; it was some time subsequent to the conversation with Mr. Wine. It was, as nearly as I recollect it, on an occasion when we were leaving my house together one afternoon, as we were going to Dupont circle to take the cars to go back to our offices. Mr. Warner pointed to the property or called attention to it and asked me what I thought it was worth, and I think I replied to him that I thought it was worth $50,000.

Q. What did he say to you?

A. I do not recall what he did say to me.

Q. Do you recall anything else?

A. That is about all there was to the conversation, as I remember it.

Q. Was anything said at that time in relation to Mr. Warner's having any interest in it?

A. No, sir.

Q. At any subsequent time was anything said by Mr. Warner or Mr. Wine to you on that subject?

A. I understood from Mr. Wine——

Q. (Interposing.) Just state what was said to you, not what you understood.

A. Mr. Wine told me in a subsequent conversation that when the matter of purchase was under consideration by himself they were considering between themselves—that is, Mr. Warner and Mr. Wine—as to whether or not they would buy jointly; and the
151 time for the sale of the property at the price named being about to expire, and Mr. Warner not having decided whether he would buy it with Mr. Wine or not, Mr. Wine decided to buy it alone.

Q. What else did he say?

A. I do not recall anything that was material to that point in any subsequent conversation.

Q. Do you recollect when you had that conversation?

A. I do not recall the date; I just remember the conversation.

Q. Do you recollect how long it was after the date of your first conversation with Mr. Wine, at your house?

A. I should say it was probably within a week; it was about that time.

Q. Did he go on to state to you anything that Mr. Warner had said to him in regard to that conversation?

A. As nearly as I can recollect that point of the conversation, Mr. Wine said that Mr. Warner not having made up his mind by the time the purchase had to be made, he decided to buy it himself, but afterwards Mr. Warner wanted to come in as a half owner in the property, and he felt that he ought not to admit him as such, having assumed the responsibility to purchase himself, but offered to sell him a half interest as he would to any outside person.

Q. And did he tell you what Mr. Warner said to him as regarded that proposition?

A. No, sir; not that I recall.

Q. Did he tell you what arrangement they had finally made between themselves?

A. No, sir; I do not recall any conversation about the subject subsequent to that with Mr. Wine.

Q. Did you have any conversation with Mr. Warner at any time in which he informed you as to what arrangement they did come to?

A. I think it was some time after this transaction in April that I had a conversation with Mr. Warner, I do not remember the date, in which Mr. Warner stated that he had purchased the property with Mr. Wine, that they were owners together. I do not know that he said they were equal owners or that he spoke of the proportionate interest that each had, but I understood from what Mr. Warner said that he had an interest in the property with Mr. Wine.

Q. State what, if anything, was said by Mr. Wine on the subject of the pressing need of the seller of said lots to obtain money at the interview at your house.

Mr. DARLINGTON: The leading character of these questions is objected to.

A. I do not recall that it was at my house in connection with the first conversation that I first learned or learned of the necessities of the seller of the property. I cannot say when it was.

Q. Do you remember having a conversation with Mr. Wine in which he made mention of any such matter? If so, state what he said to you.

A. I am not able positively to say that Mr. Wine told me. I am aware of the fact——

Q. My question was——

152 Mr. DARLINGTON: I insist that the witness should finish his answer without being broken into.

A. I am aware of the fact that the property was offered under certain conditions, which made it necessary for the party who then claimed himself to be the owner to have money at once, but whether Mr. Wine told me or who told me I am not able to say at this time. It may have been Mr. Wine; I am not sure.

Q. Do you recollect how many times you saw Mr. Warner in that month of April, 1896, or whether you saw him on any other occasion than the occasion on which you have lunched together at the time you had that conversation to which you have testified, when you told him the value of that property was in your opinion $50,000?

A. Do you mean in connection with the property, whether I saw him in connection with that property, or whether I saw him in any connection?

Q. Whether you saw him in any connection.

A. I saw him almost daily about that time—frequently.

Q. Did Mr. Warner make any inquiry of you about that time in regard to the address of Mrs. Godfrey?

A. Not that I remember.

Q. Did he ever make any such inquiry?

A. I cannot say whether he ever did or not.

Q. Do you remember?

A. I do not recall.

Q. You do not recall?

A. No, sir.

Cross-examination.

By Mr. DARLINGTON:

Q. Do you or do you not recall, on reflection, an interview with Mr. Warner at your office prior to the time you have spoken of coming from your house with him, at which the subject of this property was mentioned and at which you told him you had received a telegram from Mrs. Godfrey to the effect that she had sold the property?

A. I do not recall it.

Q. Is it a fact that you did receive such a telegram?
A. Yes, sir.
Q. Have you that with you?
A. Yes, sir.
Q. Will you kindly produce it?

(Witness here produced a telegram.)

Mr. DARLINGTON: We want to offer this telegram in evidence, and will consent to have the examiner copy it in the record and let Mr. Wight keep the original.

The telegram is as follows:

"NEW YORK, *M'ch* 31, 1896.

To John B. Wight, Esquire, real estate, 1410 G street, Wash'n:

Sold New Hampshire Avenue corner to New York party last week for full price; they will look at property today; recommended you as best real-estate agent. If they call, please uphold my
153 valuation and praise property in every respect. I want them to be satisfied with purchase.

MARY ALICE GODFREY."

Q. If you did not tell Mr. Warner about your having seen this telegram, can you imagine in what way he acquired a knowledge of it?

A. I did not say I did not show it to him. I said I could not recall having done so at the time. Mr. Warner has seen the telegram since that time. I do not recall when he first saw it. I think he has seen it more than once.

Q. Do you remember the first time that this telegram was mentioned between himself and you?

A. Mr. Warner?

Q. Yes.

A. I cannot recall the first time; I do not remember when it was.

Q. Let us see if I can refresh your recollection about the interview with Mr. Warner at your office prior to the one of which you have spoken. Do you recall his calling at your office and inquiring about this lot and about Mrs. Godfrey, the reputed owner of it, and you having told him you received this telegram, and just as you received it Mr. Dutton walked into the office that same day and very nearly the same time?

A. I cannot say that I do.

Q. Is it a fact that you did receive the telegram about the same time that Mr. Dutton called at your office?

A. The telegram was received at the same time that Mr. Dutton was in my office talking about the property.

Q. Can you tell how Mr. Warner could have learned of that fact except learning from you?

A. I cannot say as to that; it is rather an unusual coincidence. I think I mentioned it to several people. I may have mentioned it to Mr. Warner or he may have learned of it from some of the people to whom I did mention it.

Q. If I understand you, you do not mean to say that this did not occur with Mr. Warner?

A. No, sir.

Q. At which you told him about the telegram and this coincidence?

A. No, sir; I am not prepared to say whether I did or not. I may have done so.

Mr. KEANE: Fix the date, please.

Mr. DARLINGTON: If Mr. Wight does not remember, I do not see how I can fix the date.

Q. You spoke of Mr. Warner's having seen this telegram since that time. Did he ever see it at any other time than his calling with me at your office one day this week, that you remember?

A. I think so. I think Mr. Warner saw that telegram, if I am not mistaken, in 1896—in the fall of 1896, perhaps.

Q. Do you recall on what occasion or under what circumstances?

A. As nearly as I can recollect, in my office in connection with something that was being said about the property, soon after Mr. Dutton's trial in New York, and a reference to the interest Mrs. Godfrey had in the property. I will not be sure about that, but that is my impression.

154 Q. You spoke of being aware that the property had been offered under conditions that required the person claiming to be owner to have the money at once.

A. Yes, sir.

Q. When did you acquire knowledge of that circumstance or information; how did you learn that circumstance; I mean how long after your interview with Mr. Wine, of which you have spoken?

A. I am not able to say definitely, under oath, from whom I acquired that information or just when I acquired it.

Q. Was it before or after the Dutton trial took place?

A. Before.

Q. And can you tell us approximately how long it was?

A. Oh, it was about the time of this transaction, April, 1896.

Q. You spoke of your interview with Mr. Wine, in which he told you he was offered the property for $25,000 and was considering it. Do you remember telling him on that occasion that a client of yours, Mrs. Godfrey, had owned it, but she had sold it?

A. I am under the impression that I did; I will not say positively that I did.

Q. How long was this property in your hands for sale?

A. Mrs. Godfrey gave me the authority to sell for her—not the exclusive authority—in November, 1895.

Q. And it remained in your hands until this telegram of March 31, 1896?

A. Yes, sir.

Q. Did you have any offers for it during that time?

A. No, sir.

Q. Can you tell us what efforts were made to find purchasers?

A. Yes, sir; I endeavored to sell the property to Benjamin Thaw, of Pittsburg, who was spending the winter here, a friend of mine,

who was considering the question of whether he would locate in Washington. Mr. Thaw was frequently at my house, and I frequently called his attention to that corner and said all I could in its favor, and urged him to buy it. I urged him to buy it as an investment if he did not intend to build upon it. I did all I could to sell it to him. The family were then uncertain as to whether they would come here and live or whether they would live in Pittsburg or Newport, or just what they would do, and for that reason Mr. Thaw never came to the point of making a direct offer for the property.

Q. What other efforts, if any, did you make to sell it?

A. That is the only effort I made.

Q. Did you advertise it?

A. No, sir.

Q. Put bill-boards on it or anything like that?

A. No, sir.

Q. Can you tell us whether or not you were in receipt of frequent, urgent requests from Mrs. Godfrey or Miss Godfrey to sell between November, 1895, and March, 1896?

A. I had two letters from Mrs. Godfrey after the one giving me permission to sell the property for her as her agent, one inquiring as to whether I had sold and the other in answer to a letter which I wrote her stating that I thought Mr. Thaw would not buy, asking me, if possible, to sell it to some one else.

Q. This price of $50,000 was really the price suggested by the owner, was it not, in the first instance?

A. Mrs. Godfrey told me to ask $55,000 for her property, but to submit her an offer.

155 Q. Do you know any property in that locality which has sold at that rate any time within the last two or three years?

A. No, sir.

Q. Would you have any objection to producing these letters from Mrs. or Miss Godfrey to which you refer and having them copied in the record by the examiner?

A. No, sir; I have no objection.

Mr. DARLINGTON: Then I ask that that be done.

The letters are as follows:

(*Telegram.*)

"NEW YORK, *Nov.* 18, 1895.

To John B. Wright, or Wight, Esq., real estate, 1410 G street N. W., Wash., D. C.:

Price, fifty-five thousand. Make me an offer. Agree to commission asked. Have mailed particulars today. Address two hundred eighty-seven West Seventieth St., N. Y.

L. A. GODFREY."

"287 W. 70TH ST., N. E. CORNER WEST END AVE.,
NEW YORK, *March 10th*, 1896.

John B. Wight, Esq.

MY DEAR SIR: If your party decided he liked Pittsburg too well to desert it for Washington, even with a chance to own the finest corner in the world (this being the greatest nation, Washington its most beautiful city, and my corner the best in Washington), why have you not found some more appreciative party? I have been longing to send you the commission, to say nothing of getting rid of the mortgage, and the use of the money over. Hoping to hear that you still have the property in mind and perhaps a buyer in view,

Very sincerely yours, M. A. GODFREY."

"287 WEST 70TH ST., NEW YORK CITY, *Dec. 10th*, 1895.

John B. Wight, Esq.

DEAR SIR: I trust you have not lost sight of your party who was considering the cor. of N. H. Ave. and Q street as a buyer. This corner is considered one of the very finest in Washington, and now, with its surroundings so beautifully finished, I should think we would surely find a purchaser this year. I hope you will be successful with your party and soon be able to make me an offer. I have almost every week enquiries and propositions for it, but so far nothing that I could accept. Hoping to hear something favorable from you soon,

Very sincerely yours, M. A. GODFREY."

156 "287 WEST 70TH ST., NEW YORK CITY,
MONDAY MORNING.

John B. Wight, Esq.

DEAR SIR: I am just in receipt of your letter of date 13 Nov., it being forwarded. I will be very glad to sell the property, and will give you three per ct. commission. If I can have it sold this week, it will save me making a new loan, as one on lots 1 and 66 of $8,000 comes due Nov. 28th, and I am going to renew and increase it to $12,000, unless I sell this week, and then I would give buyer a loan of $14,000 back on property—lots 1 and 66, if required—or less, as I can pay off the $8,000 with some cash of sale. Please let me know at once if you have any fair prospect of selling. My price has been the same for some time, but you can make me an offer and I will consider it and promptly answer. Price, $8.65 per square ft., making about $55,000.

Mortgages or notes.

On lots 1 and 66,	$8,000,	at 6 %,	due Nov. 28, 1895.
On lot 2,	3,500,	"	" 1896.
On lot 3,	4,000,	"	" 1897.

This is a unique and valuable corner, as millions of dollars of improvements have been put around it to finish every point sur-

rounding it. Hoping to hear from you promptly on acc't of loan and wishing you success,

Very truly yours, MARY ALICE GODFREY,
For Owner, L. A. Godfrey.

Address surely 287 West 70th St., New York. You may send a telegram (collect here) if necessary."

Q. Can you recall any sales in that neighborhood at that rate, or approximating it, since 1893, when the depreciation came on?

A. I do not know of any property that was sold in that immediate neighborhood for as high a figure as that. That would be about $8 a foot.

Q. I do not wish to ask impossibilities of you, but will endeavor to refresh your recollection about this first interview with Mr. Warner at your office about this property. Do you not remember telling him you had received a telegram from Mrs. Godfrey asking him to "crack up" this property, so that the purchaser who bought it would be satisfied with the purchase?

A. I do not think I spoke to Mr. Warner of the telegram in just that way when I first spoke of it.

Mr. KEANE: Can you fix the date of the interview that you refer to in some way?

Mr. DARLINGTON: The witness cannot recollect. I will ask such a question as that if I think proper, and you can cross-examine him if you wish.

Mr. KEANE: If you have in your mind a date and will specify it, I will be much obliged.

157 Q. Do you know the triangle just north of this property?

A. Yes, sir. I suppose you refer to the Hooe property?

Q. Do you know when and at what price that triangle sold?

A. The last sale was an auction sale, I think—friendly sale for the sake of acquiring title, bought in by the owner.

Q. Do you remember when that took place?

A. I think it was two or three years ago; three years ago, perhaps.

Q. Do you recollect the price it brought?

A. No, sir; I do not. I recall the price that was asked for the property.

Q. That does not always indicate its value, does it?

A. Not always.

Q. Do you know the property of Nelson Paige, the author?

A. Yes, sir.

Q. Where is that located?

A. Corner of N. H. Ave. and R street.

Q. How far from this property?

A. One square.

Q. Do you know what Mr. Paige paid for that corner?

A. I think he paid $6 and thirty-some cents; I am not sure about that; it is simply a matter of recollection.

Q. Was it not five and a half dollars?

A. It may have been; I am not sure; I have not any interest in the claim.

Q. You are not concerned in it?

A. No, sir.

Q. Do you know about when that sale took place?

A. I think it was about a year and a half ago.

Q. When you were informed by Mr. Wine that the property in question was being offered at the price you have named, did you communicate that fact to Mrs. Godfrey?

A. No, sir.

Q. Why not?

A. Mrs. Godfrey had informed me she had sold it.

Q. Have you any means of fixing the date at which this conversation occurred with Mr. Warner—leaving your house—in which you told him the property was worth $50,000 or thereabouts?

A. My impression is it was on the afternoon of April 24th.

By Mr. KEANE:

Q. Will you state what the reasons were for your placing the valuation at $50,000 upon that property?

Mr. DARLINGTON: Objected to as having been gone into in chief and not being responsive to the cross-examination.

A. The surroundings of the lot and its peculiarities, as being the only northwest corner available in that immediate vicinity, Dupont circle and the character of the houses around it, made it, in my opinion, a very desirable piece of property—not to be judged in value as other lots—of which there might be others of a similar character and desirability in the market. I thought at that time, and I still think, there is a great difference between the northwest corner of N. H. Ave. and Q street and N. H. Ave. and R street.

158 The surroundings are entirely different, which are a valuable consideration in estimating the value of a piece of property.

Q. Are there any other reasons which led you to form that opinion—the junction there of any more than the usual number of streets?

A. No; the same thing is true of other points on avenues; but the surrounding property is handsomely built up, which insures the neighborhood and makes it valuable.

Q. What is the nature of the improvements in that neighborhood?

A. Handsome residences.

Q. Can you mention any of the residences in that vicinity?

A. Mr. Whittimore's, on one corner; Mrs. Clover's, on another corner; Schneider's, on another corner; Mrs. Van Wyck's, on the opposite corner.

Q. And this is the only remaining corner that is vacant?

A. The only northwest corner—the only remaining corner in that intersection of streets.

Q. And that is the junction of three streets, is it not?

A. Yes, sir.

Q. N. H. Ave., Q street, and 18th street?
A. Yes, sir.
Q. And how far is Dupont circle from there—about half a square?
A. One square. P street runs through the center of it.
Q. It is a very short block, is it not?
A. Yes, sir; it is one of the short blocks.
Q. There are the Leiter house and the Whittimore house on the block between Dupont circle and this property?
A. Yes, sir.
Q. Do you recall the Louise Home and that locality?
A. Yes, sir.
Q. Do you remember what that sold for, or other property adjoining the Louise Home?
A. I think Mr. Fairfield Carpenter bought a portion of the grounds on Louise Home, 16th street or Scott's circle, and I am informed he paid $10 a foot for it, but I do not know that.

Mr. DARLINGTON: Objected to as hearsay.

Q. Do you consider that as good a site as the site of this property on the corner of N. H. Ave. and Q street?
A. No, sir.
Q. When did Mr. Carpenter buy that?
A. I cannot give the date; I think it was, perhaps, in 1890 or 1891.
Q. How did the real-estate market compare at that time with the condition of the real-estate market ordinarily in April, 1896?
A. What do you mean by that time?
Q. How did the real-estate market compare at that time—that is, in 1896—with the condition of the real-estate market ordinarily—was the real-estate market at that time in fairly good condition?
A. No, sir; it was not; it was in a rather bad condition.
Q. And you placed your valuation on that property as being worth $50,000 with that knowledge, did you not?

Mr. DARLINGTON: Having objected to the leading character of the questions, I nevertheless reiterate it here.

159 Q. With the knowledge of the condition of the market?
A. I did.
Q. In your conversation with Mr. Wine at your house, state whether or not any reference was made to the consideration which Mr. Dutton had given Miss Godfrey in exchange for her property.
A. I think I stated to Mr. Wine the consideration which Mr. Dutton had named in connection with the trade.
Q. What was it you said to him?
A. $65,000.
Q. That Dutton had exchanged property worth $65,000?
A. That he had allowed in the trade $65,000 for that corner.
Q. Do you recollect what Mr. Wine said to that?
A. No, sir.
Q. Will you state when it was that you first showed Mr. Warner

the telegram that has been offered in evidence, dated March 31, 1896?

A. I have already said that I could not state the date when I first showed him that telegram. I do not recall it.

Q. Do you remember where you showed it to him?

A. No, sir.

Q. Do you remember how long subsequent to the conversation that you had with Mr. Wine, at your house, it was that you showed that telegram to Mr. Warner?

Mr. DARLINGTON: I object.

A. Naturally I cannot state that, if I do not remember when I showed it to him.

Mr. DARLINGTON: I object to the question as argumentative, misleading, and improper, since counsel well knows that the witness never said the telegram was first shown to Mr. Warner subsequent to the interview with Mr. Wine.

Q. Do you remember seeing Mr. Warner within a week of the time that you had that conversation with Mr. Wine at your house, so as to have had a conversation with him on the subject of this property?

Mr. DARLINGTON: Objected to, as the witness has already stated he saw Mr. Warner almost daily, and it would be impossible for him to say when he saw him last, before or after.

A. I was seeing Mr. Warner constantly about that time. I do not recall any other conversation in regard to this transaction than the one to which I have made reference.

Q. When was your first conversation with Mr. Warner on the subject of this property?

A. I have already stated that I believe it to have been on the afternoon of April 24th, when Mr. Warner asked me my opinion of the value of the property.

Q. So that you are willing to say that you had no conversation with Mr. Warner on the subject of this telegram prior to the date you have just mentioned?

A. I am willing to say I do not recall any.

Q. Was this telegram shown by you to Mr. Wine the night
160 of your first interview with him at your house?

A. No, sir; it was not.

Q. Can you fix the day; what day of the week was it that you saw Mr. Wine at your house on that first occasion?

A. I think it was Friday evening, April 10.

By Mr. DARLINGTON:

Q. Did you ever show this telegram to Mr. Wine that you recall?

A. I do not think I ever did.

Q. Now, in regard to your first interview with Mr. Warner about his transaction, is your recollection clear enough to enable you to

say that you did not see him at your office about ten days after the interview at your house of which you have spoken?

A. In regard to the corner?

Q. Yes.

A. I will not say I did not or that I did have any conversation with him in regard to it. I may have done so; I do not recall.

Q. Will this question help you to remember whether or not you had such a prior interview? Do you remember telling Mr. Warner at your office, about ten days prior to the interview at your house, of which you have spoken, that the man Dutton was a great lubberly-looking fellow?

A. I remember when I did speak with Mr. Warner about Dutton—just when it was or the date was I do not recall—as to my impression of Dutton's appearance, I spoke of him as a very coarse, common-looking man.

Q. Was not that conversation at your office?

A. It may have been.

Q. And not this interview at your house that you have spoken of?

A. No, sir; I think not.

Q. May not that have been prior to the house interview?

A. It may have been.

Q. Is it not true that there has been a steady and considerable depreciation of real-estate values since 1893 in this city?

A. Yes, sir.

Q. What was this property worth in 1893, in your opinion?

A. I do not know that I can say. I would like to say in connection with that property that I think, in its uniqueness as to the features I have spoken of, its peculiar location and surroundings, it is not subject to the same depreciation in price that other pieces of property are which may be one of a good many similar kinds of property in the market.

Q. Does not the uniqueness and desirability of property apply equally to all conditions in the real-estate market?

A. No; I think not.

Q. Was there ever a time within your knowledge when $50,000 would have been a low price for that property?

A. I had considered $50,000 a fair price for that property.

Q. My question is if you know of any time since you were in the real-estate business when that would not have been a fair price for it?

A. Since I have had my attention called to the corner I have considered that its value.

161 Q. You have stated that you did not have the exclusi[ve] sale of the property in your hands?

A. Yes, sir.

Q. Do you know what other person had charge of it besides yourself?

A. No, sir; I do not. Mrs. Godfrey's own card was on the property at the time of my negotiations with her. Whether she had given any one else the right to sell it I do not know.

Q. Was not also the board of General Robertson on it at that time?

A. No, sir; Gen. Robertson's card was not on it at that time. There was no other card, except Mrs. Godfrey's.

JOHN B. WIGHT.

Sworn to and subscribed before me this 19th day of February, 1898.

ROB'T L. MILLER, *Examiner.*

* * * * * * *

162 WILLIAM E. EDMONSTON, a witness produced on behalf of the complainant, being first duly sworn, was examined and testified as follows:

By Mr. KEANE:

Q. Where do you reside?

A. City of Washington, District of Columbia.

Q. How long have you resided here?

A. Fifty years.

Q. What is your occupation?

A. I am at present the president of the Columbia Title Insurance Company, and have been such for the past ten years.

Q. Was the title to the premises situate in the city of Washington, District of Columbia, more particularly known as lots 1, 2, 3, and 66, in square 134, on the land map of the District of Columbia, searched in the office of the Columbia Title Insurance Company?

A. It was.

Q. When was that?

A. April, 1896.

Q. At whose request was the search made?

A. At the request of B. H. Warner & Co.

Q. And by whom on their behalf?

A. I do not remember who left the order. It was left in the front office, and I probably did not know and do not know who really did leave the order.

Q. Which member of that firm did you personally first have any conversation with on the subject?

A. With Mr. Wine.

Q. When was that?

A. That was on the morning of April 13.

Q. What did he say to you?

A. He left with me a check to close the sale of that property.

Q. Do you remember the amount of the check?

A. $7,806.33. That was the——

Q. (Interposing.) What did you do with that check?

A. We deposited it to our credit and drew upon it. We had also with the order or at the office, I think, the original contract of sale between Mr. Dutton and the purchaser which called for a

163 cash payment, as I remember, of $7,500, subject to encumbrances, amounting to $18,000, I think. I have forgotten the exact sum.

Q. What else did Mr. Wine say to you?

A. I do not recall anything specially at that time.

Q. Did he say anything at all to you further on the subject of the transaction?

A. I think he came later in the day in which the conversation was had. We had made up a statement showing the amount of the accrued interest and the amount of accrued taxes to the date of sale——

Q. I ask you now——

Mr. DARLINGTON: Objection is noted to the breaking in upon the witness and not permitting him to complete his answer.

Mr. KEANE: I want him to respond to my question and not to ramble away with things that are not relevant or material.

Q. I am speaking now of a conversation between you and Mr. Wine, and I want you to tell all that Mr. Wine said to you personally on the subject of this transaction; I want you to tell us all he said.

A. I cannot recall anything that he said, except that the title was to be made, I think, to Mr. Richardson, and I think he said that was done for the purpose of convenience.

Q. Go on and state all that he said.

A. That is about all I remember now that was said at the first interview.

Q. When did you have the next interview with him?

A. Later in the morning. A statement had been made up of what the accrued interest——

Q. (Interposing.) Was this a conversation with Mr. Wine that you are talking of now? I am talking now of conversations between you and Mr. Wine.

A. Later in the forenoon Mr. Wine was at the office. He came at our request in order to adjust the matter of taxes. Mr. Dutton refused to allow the accrued taxes to be deducted from the purchase-money of $25,000, and we telephoned to Mr. Wine of that contention of Mr. Dutton's and what we should—whether we should let the sale go through and he assume the accrued taxes or whether he would insist upon the terms of the contract. We said he had better come down, and he did come down, and he and Mr. Dutton had quite a talk in the side room, in which I was not present.

Q. What was said by Mr. Wine to you, if anything, as to who the real purchaser of that property was?

A. I do not recall now that he said anything. I think I learned afterwards, or was informed afterwards, that he and Mr. Warner were interested. I do not think at the time I knew really who was interested.

Q. Are you sure that he did not tell you at the time who the real party in interest was?

A. No; I am not absolutely sure. My recollection is that he did not.

Q. To the best of your recollection?

A. To the best of my recollection he did not, because——

Q. (Interposing.) And how is your recollection about the facts of this transaction at that time?

164 A. We had a good many of these settlement cases, and it did not generally and does not generally make much of an impression. They are settled, and that is the end of it.

Q. How long afterwards was it that you learned, as you have just stated, that Mr. Warner and Mr. Wine had an interest in the purchase of that property?

A. I cannot recall anything that I knew of positively until this suit was filed.

Q. Do you recollect who it was who first informed you?

A. No; I do not; I cannot remember.

Q. Do you recollect where you were when you first learned of this fact?

Mr. DARLINGTON: Question objected to on account of its utter immateriality, it being wholly immaterial in any possible phase of this case where Mr. Edmonston learned what Mr. Wine's interests were.

A. No; I do not remember distinctly much about it, really.

Q. What instructions did you receive at the time, if any, in regard to the searching of this title with reference to being expeditious about it? Was it made special?

A. Possibly it was, but I really do not know myself. That direction may have been given to the clerk in the front office. I think it was ordered on the 10th and was gotten out on the 13th, but we had almost all that title down within a few years, so that it was practically a continuation and not a new examination so far as we were concerned. I think Mr. Wine did say the seller was in a hurry, but he was not. He wanted us to be thorough in the examination—something of that kind; that is what I understood from the clerk.

Q. Let me caution you on the witness stand that you testify to what you know and not to what you understand.

A. I was telling you what I was informed.

Q. Who were present on this occasion?

A. Which occasion do you refer to now?

Q. On the 13th of April, 1896. You have stated that in the afternoon there Mr. Wine came up in response to a telephone message, and I asked you who were present. State all who were present.

A. I think Mr. Dutton was there, and I think Mrs. Mussey was there, outside of the clerks there.

Q. Was Mrs. Dutton there?

A. I think not.

Q. Was Mr. Richardson there?

A. No; Mr. Richardson was not there.

Q. Now, state what took place further than what you have already related.

A. Mr. Wine and Mr. Dutton were talking in an adjoining room. I don't know what was said. The parties parted, not having come,

as I understood, to any agreement about these taxes, Mr. Dutton insisting that they should not be——

Q. (Interposing.) Were you present and heard what Mr. Dutton insisted upon?

A. Probably I was not. I was in the adjoining room.

Q. Will you be kind enough to inform us as to your
165 knowledge of what took place on that occasion?

A. They left the office and they did not return until the afternoon. This occurred in the forenoon.

Q. I am talking of the afternoon now. Was it not in the afternoon——

A. (Interposing.) No. It was in the forenoon.

Q. Was it not in the afternoon that Mr. Wine was called up on the telephone?

A. No, sir. It was in the forenoon.

Q. Now, have you related all that took place in the forenoon?

A. All that I remember.

Q. What took place in the afternoon?

A. Mr. Dutton returned and agreed to allow the taxes to be deducted.

Q. Go on and state what took place.

A. Then the case was settled.

Q. Who were present?

A. Mrs. Mussey was there, representing Mr. Dutton; I was there a part of the time, and the secretary or one of the clerks may have been there a part of the time; I do not remember. I made the statements, and then prepared the checks.

Q. Have you stated all the persons who were present?

A. Yes; I think I have.

Q. Was Mr. Richardson there?

A. No, sir; Mr. Richardson was not there.

Q. Was Mrs. Dutton there?

A. I think she had executed the deed; possibly she was in the office to execute the deed, but she was not there when the settlement was made—not in that office. Whether she was outside or not, I do not know.

Q. Go on and state what took place.

A. I prepared the checks for settlement. They were all made to the order of Mr. Dutton——

Q. (Interposing.) Have you those checks with you?

A. And indorsed by him. I have them with me; yes, sir (handing checks to counsel for complainant).

Mr. KEANE: We offer these checks in evidence.

Mr. DARLINGTON: We agree that the checks be copied in the record by the examiner.

The checks produced by the witness, five in number, are in words and figures following:

No. 6910.

Office of the Columbia Title Insurance Co., Fifth and E Sts. N. W.

WASHINGTON, D. C., *April* 13*th*, 1896.

The Columbia National Bank of Washington

Pay to the order of Stephen A. Dutton $250, two hundred and fifty dollars.

(Signed) W. E. EDMONSTON,
President the Columbia Title Insurance Company.

In re ——.

Endorsed: Stephen A. Dutton, Ellen S. Mussey.

166 No. 6911.

Office of the Columbia Title Insurance Co., Fifth and E Sts. N. W.

WASHINGTON, D. C., *April* 13*th*, 1896.

The Columbia National Bank of Washington

Pay to the order of Stephen A. Dutton $500, five hundred dollars.

(Signed) W. E. EDMONSTON,
President the Columbia Title Insurance Company.

In re lots in sq. 134.

Endorsed: Pay to the order of B. H. Warner & Co., Stephen A. Dutton, Columbia National Bank, credit account of B. H. Warner & Co.

No. 6912.

Office of the Columbia Title Insurance Co., Fifth and E Sts. N. W.

WASHINGTON, D. C., *April* 13, 1896.

The Columbia National Bank of Washington

Pay to the order of Stephen A. Dutton $309.66, three hundred — dollars $\frac{66}{100}$.

(Signed) W. E. EDMONSTON,
President the Columbia Title Insurance Company.

In re ——.

Endorsed: Stephen A. Dutton, S. A. Dutton, E. S. Mussey, att'y.

No. 6913.

Office of the Columbia Title Insurance Co., Fifth and E Sts. N. W.

WASHINGTON, D. C., *April* 13, 1896.

The Columbia National Bank of Washington

Pay to the order of Stephen A. Dutton $4,000.00, four thousand dollars.

(Signed) W. E. EDMONSTON,
President the Columbia Title Insurance Company.

In re lots in sq. 134.

Endorsed: Stephen A. Dutton, E. S. Mussey.

167 No. 6914.

Office of the Columbia Title Insurance Co., Fifth and E Sts. N. W.

WASHINGTON, D. C., *April* 13, 1896.

The Columbia National Bank of Washington

Pay to the order of Stephen A. Dutton $2,026.67, two thousand and twenty-six $\frac{67}{100}$ dollars.

(Signed) W. E. EDMONSTON,
President the Columbia Title Insurance Company.

In re lots in sq. 134.

Endorsed: Stephen A. Dutton, E. S. Mussey.

Q. At whose instance were these checks made out in their respective amounts?

A. The contract called for 3 % commission.

Q. At whose instance were these checks made out in their respective amounts *in* my question?

A. At the instance of two or three persons.

Q. Name them.

A. Mrs. Mussey's instance as to one check.

Q. Which check was that?

A. That was the check for three hundred and some dollars.

Q. $309.66?

A. Yes, sir; $309.66.

Q. Go right on.

A. $250 and $500 checks were for the commission.

Q. At whose instance were those checks made out and those amounts?

A. I understood that Mrs. Mussey was to get——

Q. (Interposing.) At whose instance were those checks made out and those amounts? Please answer my question.

A. I think at the request of Mrs. Mussey, so that she might get one check of $250. The other check of $500 was to go back to B. H.

Warner & Co. as their part of the commission. The other two checks were made at the request of Mr. Dutton.

Q. At whose instance was the check for $500 made out in that amount?

A. Warner & Co. wanted $500 for commissions and Mrs. Mussey wanted $250, and we made the checks out that way, so that the checks could be endorsed directly over to the parties.

Q. At whose instance was the check for $400 made out in that amount?

A. That was at the instance of Mr. Dutton. The two checks covering the balance were made out at his request.

Q. And the check for $2,026.67 was made out at whose instance?

A. At the request of Mr. Dutton—that is, he wanted the amount coming to him in those sums; he wanted the $4,000 check and the balance.

Q. Were these requests made to you personally?

A. Yes.

Q. By the parties you have mentioned?

A. By Mrs. Mussey and Mr. Dutton. Mrs. Mussey wanted $250 and the $309 made so that they could be endorsed over to her.

Q. And the other parties also made the request of you personally, did they?

168 A. Mr. Dutton made that request. He asked me for the balance coming to him. Of course, it follows, as a matter of course, that I had $500 in my hands coming back to Warner & Co. as commissions.

Q. I want you to state what Mr. Dutton said to you at the time he made that request.

A. I do not really recall what he did say except that he gave me the amounts as to how he wanted them.

Q. Did he not explain to you why he desired the checks made out in those respective amounts of $4,000 and $2,026.67?

A. I am not positive. I have an impression that he said he wanted to use part of it on the way. Of course, I paid very little attention to that. It did not matter to me how he wanted it or why he wanted it in different amounts.

Q. Would that have been an explanation, to your mind, why two checks should have been made instead of one, because he wanted to use part of it on the way?

Mr. DARLINGTON: Question objected to as immaterial and irrelevant.

A. I would not have required any explanation or made any inquiry for the reason of it.

(Question repeated.)

A. That would have been a reasonable explanation.

Q. Would that have facilitated that purpose in your mind?

A. I should suppose it would.

Q. Would it be easier to use part of the money on the way by getting two checks instead of one?

A. I should suppose it would, if he had wanted to carry the other

one with him. I do not know what he wanted to do with it. He first spoke about a draft of $4,000, but the case was settled too late for us to get a draft, and so I gave him a check for $4,000 as well as a check for the other sum of $2,026.67.

Q. Who was present at the time as the representative of Warner & Wine?

A. There was nobody present representing them. They left the money with instructions to us to close the sale according to that contract, and we undertook to do that.

Q. Did you know Warner and Wine at all individually in this transaction, or was it B. H. Warner & Co. that you thought you were dealing with?

A. B. H. Warner & Co. ordered the examination, and it was the check of B. H. Warner & Co.

Q. And you regarded Mr. Wine as the representative of B. H. Warner & Co.?

By Mr. DARLINGTON: Question objected to as utterly incompetent and immaterial as in what capacity Mr. Edmonston regarded Mr. Wine or whether he regarded him in any capacity.

Q. I will put the question differently. State whether Mr. Wine acted on that occasion as the representative of B. H. Warner & Co. or in his individual capacity.

169 Mr. DARLINGTON: Question objected to as calling for inferences and conclusions of law and not of any fact shown within the knowledge of the witness.

Q. State, if you know.

A. I really do not know.

Q. You say you do not know?

A. No.

Q. He did not inform you?

A. No; I don't think he did.

Q. And you did not learn until several months subsequently?

A. No; I do not think I did know who was the real beneficiary. I knew that Mr. Richardson was not the real purchaser, as I stated.

Q. You knew at that time that Mr. Richardson was not the real purchaser?

A. I understood from Mr. Wine that he was not. It was taken in his name for convenience.

Q. State all Mr. Wine said to you on that subject.

A. I think all he said was that the parties were going to have the title taken—there were several interested in the property—and the title would be taken in the name of Mr. Richardson.

Q. Did he add "for convenience"?

A. I think so.

Q. Are you sure?

A. I am not sure; I may have only inferred that; I am not sure about it; I am not certain whether he said that or whether I inferred it; it is so often done that way.

Q. What led you to infer it?

A. Infer what?

Q. You say you inferred that the title was taken in the name of Mr. Richardson?

A. I said I might have inferred it.

Q. "For convenience?" What led you to infer that?

Mr. DARLINGTON: Question objected to. He said, "Mr. Wine told me it was a matter of convenience," or that he inferred that.

Q. Do you recollect what day of the week the 13th of April, 1896, was?

A. No; I think it was on Monday, but I am not certain.

Q. And you say you received the order for this search on Friday, the 10th?

A. The 10th or possibly the 11th; I am not certain.

Cross-examination.

By Mr. DARLINGTON:

Q. Please look at the paper I now hand you (handing witness a paper), purporting to be a contract of sale between L. W. Richardson and Stephen A. Dutton, and state whether that is the paper which was submitted to you at that time as the basis on which to conduct this transaction.

A. (After examining same.) Yes; I think so; I will say that is my writing in pencil on that copy.

Q. Whereas, in this instance you had the title pretty nearly down to date, and had only to continue it, tell us whether this transaction was closed in an unusually short period of time.

A. Not where we had it practically down as we had in this case.

Q. Can you tell us how near you had it down to the date of the transaction before the order was left with you?

A. We had a case that brought it through to December 14, 1895—a previous case; December 14, 1895, we brought most of it down——

170 Q. (Interposing.) That is, on December 14, 1895, you had a piece of property in the same locality which brought down——

A. (Interposing.) It brought down, I think, one of these lots, and the other was from 1879. Of course, in the way we have our books arranged, it does not take very long if there are not many transfers.

Q. You refer to numerous settlement cases. Please explain on the record what is meant by settlement cases.

A. Cases where the money to close a loan or sale is left with us with instructions, and we settle the sale or the loan according to those instructions.

Q. Can you give us any idea of what proportion of real-estate transactions are now conducted in that way, in 1896 and now, in this city?

A. No; I cannot give the proportion.

Q. Is it a usual or unusual method?

A. It is quite a usual one now.

Q. And was it so at the time of this transaction?
A. It was so at the time of this transaction.
Q. You have also referred to the conveyance of the title to a third person for convenience as being done very often. Please explain what knowledge you have on that subject.
A. There are a great many transactions passing through the office in settlement cases where that comes to our knowledge and notice in one way or another.
Q. Do you mean in the transactions of B. H. Warner & Co.?
A. Oh, I do not mean with reference to them especially; I mean generally.
Q. Is it not, as a matter of fact, quite a usual thing today, where property is being bought and sold through real-estate firms, to have the title put in the name of some unmarried person who can make title without calling in the wives of the various persons who may be concerned in it?
A. I understand that is done.
Q. And was so understood at the time of this transaction?
A. Yes; it was so understood at that time.
Q. What, if anything, were the unusual features of this transaction; were there any?
A. There was nothing that struck me as unusual.

Redirect examination.

By Mr. KEANE:

Q. There were four lots involved in this search, were there not?
A. Yes, sir.
Q. How far was it necessary to make a search of lots 2 and 3?
A. We had the title, probably, to the whole square or all that part of the square down to 1879.
Q. Both lots?
A. Of lots 2 and 3.
Q. How many years did that make it necessary for you to search?
A. Eighteen years or seventeen years.
Q. Seventeen years?
A. Very nearly seventeen years.
Q. And how far was it necessary for you to search lots 1 and 66?
171 A. Lot 66, we had had a full examination of that down to 1895, down to December 14, 1895.
Q. And lot 1?
A. Oh, 1 and 66 were brought down to December 14, 1895. That was for the Provident Life and Trust Co. when they put the loan on these two lots, in November, 1895.
Q. That made it necessary for you to search back how far for those two lots?
A. About a year and a half for those two lots, and about 17 years for lots 2 and 3.
Q. Whom did you detail to make that search?
A. It goes through a great many hands.

Q. How many hands did that go through?

A. Oh, we make out what we call a chain of title, which gives the reference to the various deeds affecting that particular property or those particular lots. That is all tabulated under the square, and that can be gotten at in a very little while if there are not many transfers. We have them all up in a line under one block. After the chain is gotten out an examiner takes it to the record office and examines each deed to see that the deeds are properly executed, and in the meantime another looks through the clerk's office lists for judgments, decrees, and all these things are taken off and are turned into the hands of another clerk, so that there may be two or three working on it at one time.

Q. And this clerk who looks up the judgments, decrees, &c., has to make his search in books in the hall of records here?

A. No; we generally have most of the names all worked out. If anybody has been dealing in real estate to any extent, we have their names worked all out. That is a reference to all the equity suits, criminals, judgments, &c., against them, and that is often brought right down to within a few days, and then we have our own books that are posted on the order of a directory, so that we can tell almost in an instant whether there are any judgments; if there are no judgment- against any particular name we can tell it in a minute. We have a system of our own different from the clerk's office in every respect.

Q. Is it necessary to send out of your office at all to make any search?

A. Not in the clerk's office, unless there are some judgments to be looked at, which we have not previously examined, to see whether they have been satisfied or some equity suits be digested.

Q. Do you not always do it out of extra caution?

A. No; our books are more reliable than the clerk's office; it was all taken off, carefully compared, and recompared, whereas the clerk's office books are simply entered up by one man and have no comparison.

Q. How many books would have to be consulted in making a search for 17 years?

A. So far as the record office is concerned, it would take the running of three books, and they sometimes may have only a page or two pages of matter.

Q. It depends altogether, then, upon the particular title, does it not?

A. It depends upon the particular title. Of course, there are some that are not very difficult and we have run the names.

172 This happened to be the case in this title, and we had it worked down to a recent period.

Q. Do you call seventeen years a recent period?

A. It is not a long period with us, and if there are not many transfers we can do it as quickly as we can two — three years where there are the same number of transfers.

Q. Do you recollect sending a letter to Miss Godfrey stating that your usual time to make a search is from ten days to two weeks?

A. No; I do not remember sending any letter of that kind.
Q. In December of 1895?
A. No; I do not remember.
Q. What is the fact?
A. Some titles, a Georgetown title or a county title, it sometimes takes a month, because you cannot give——
Q. How is the fact as to whether the usual time to make search is from ten days to two weeks?
A. It depends upon how busy we are. In the present condition of affairs we might make it in two or three days. In 1892 and 1893, when business was very rushing, of course, we could not get them out as quick; we had an accumulation.
Q. What year was this?
A. In 1896.
Q. Will you swear you did not write a letter to Miss Godfrey stating that the usual time in which to make seach in your office was from ten days to two weeks?

Mr. DARLINGTON: I object. If there is any such letter, it should be submitted to the witness, and then he should be interrogated with reference to it.

A. I do not remember of any such letter.
Q. In connection with this same property?
A. No; I do not remember.
Q. Would such a statement be erroneous?
A. It would depend upon the condition of the work at the time.
Q. Where a search is not marked "special" what is the usual time in which it is made in your office?
A. From two to three days to a week.
Q. Where a search is marked "special" what is the usual time?
A. Unless there is an examination exceedingly difficult, we can get it out in two days.
Q. In how many days?
A. In a couple of days, if there is nothing extraordinary or unusual.
Q. So that if a search is marked "special" you are only able to get it out one day quicker than your usual time for making searches; is that true?
A. It depends upon the condition of the business; the number of orders ahead of it.
Q. Therefore, the time in which a search could be made would depend upon the number of searches that were ahead of it?
A. Yes, sir; and the character of those searches, whether they were easy or difficult. Some are easy and some are difficult.
Q. Is your office your busy office?
A. It has been; sometimes it is not.
173 Q. Has it generally a number of searches to make?
A. Generally it has.
Q. Do you regulate your office affairs so as to meet the requirements of your business?

Mr. DARLINGTON: I object to the further cross-examination of Mr. Edmonston by counsel who called him as his witness, as also the irrelevant and immaterial character of the general issue.

A. We have the same force always on hand, as a rule.

Q. You do not vary your force?

A. We do not vary our force, and we endeavor to get the cases out as early as it is possible and as early as they are required. Sometimes they are not required immediately, and, of course, we give the right of way to those which are required immediately.

Q. And what are the months of the year when you are usually most busy?

A. It varies in different years; generally in the fall and spring we are more busy than we are in the summer and winter.

Q. What are the numbers of searches that you usually have to make in the busy season?

A. I cannot tell you that without reference to the books, because they vary every day and week and month and year.

Q. How much work was there to be done upon this title? Have you a record to indicate?

A. Yes; I can tell you how many days were actually consumed in the examination after the order was given. We had had it examined in a former case, and, of course, we did not re-examine it. Those were not re-examined because they had been examined on a continuation. We had all that on a continuation from 1888; that was examined in another case.

Q. How many deeds did you examine?

A. We examined fifteen deeds altogether, including the deed to Richardson.

Q. The search in regard to the title of lots 2 and 3?

A. Of all the lots.

Q. All the lots involved the examination of fifteen deeds?

A. All the lots involved the examination of fifteen deeds.

By Mr. DARLINGTON:

Q. Including the deed to Richardson?

A. Including the deed to Richardson.

Q. Where was it that those deeds had to be examined?

A. They were examined in the record office.

By Mr. KEANE:

Q. Was it necessary to send some one over to the record office to examine them?

A. There are clerks there all the time to do that examination.

Q. And you had to send over to them?

A. We send the chain——

174 Q. (Interposing.) From which to make an examination of those deeds?

A. Yes, sir.

Q. And those deeds are spread over a series of years, are they not?

A. Yes, sir.

Q. Can you tell me when you sent over to the clerk to make that search?

A. We have our marks when it was finished. That was all done on April 13th.

Q. It was finished on April 13th.

A. All of it was done on the 13th of April.

Q. What time of the day?

A. That I do not remember now.

Q. The title was closed——

A. (Interposing.) At the end of the day. That was examined by Mr. Jones, who was then in our office, but who is not there now. All those deeds ought to be examined in an hour. Most of them are deeds of trust and releases. I think I can examine them in an hour and a half myself.

Q. What else did the search of that title involve?

A. That also involved the looking for judgments and decrees against all the parties whose names appeared on the chain.

Q. Who made that examination?

A. That was made by another of the clerks.

Q. In the record office?

A. No; in our office.

Q. Where did he make that examination or search?

A. In our office.

Q. In your books?

A. On our books, unless there are some judgments or something of that kind to be examined that had not been previously examined. We had continued this title in the name of Mrs. Bell and Mrs. Berry. We had nearly all those names in the other search, and if there was nothing against them, no judgments or decrees against them, we could do it in two or three minutes. We can take a name, and if there is nothing against that name we can run it in our books in five minutes and probably ascertain that fact. If there are judgments that show up which we have not examined, we have to send to the clerk's office to examine them.

Q. What else was involved in the search of this title?

A. That is all except looking up the surveyor's office. That is done by the man who examines the chain. That only requires a few minutes.

Q. Are you able to state what other business in the way of searches you had on hand at that time?

A. I cannot tell now. Our books show just what we had on.

Q. The search was made substantially on Saturday, was it not?

A. Saturday and Monday morning. The search was actually completed on April 13th by our company.

By Mr. DARLINGTON:

Q. You told us as to lots 1 and 66 you had the examination already brought down to a year and a half. Was it not a year instead of a year and a half, the summer of 1895?

A. Oh, yes. I was thinking about 1897. It was really a few months.

Q. It was just four months?

A. It was just four months.

175 Q. What is meant by making a case "special" in your business?

A. They take it up out of its order.

Q. If the parties are in a hurry—I mean if the parties are not in a hurry—their orders wait until they are reached in due course?

A. Yes, sir; that is it.

Q. If they desire expedition and you can do so, you could take it up at once?

A. Yes, sir; if not disadvantageous to others.

Q. Is it usual or not usual to make it "special"?

A. That is frequently done.

Q. What degree of suspicion attaches in your office to make a request "special"?

A. It is not suspicion. It is the anxiety of the agent generally; it is an outside fact.

Q. What do you mean by the anxiety of the agent?

A. Generally the real-estate agent.

Q. As soon as the thing goes through he gets his commission?

A. Yes, sir.

By Mr. KEANE:

Q. Is B. H. Warner one of the directors of your company?

A. Yes, sir; he is.

By Mr. DARLINGTON:

Q. How long has he been so?

A. Ever since the company started.

Q. How long is that?

A. Nearly eleven years, now.

Q. What favors or discrimination has Mr. Warner asked of the company on that account or any other during those eleven years?

A. He never asked any favors. Sometimes we thought *he* had not done favors enough by his orders.

By Mr. KEANE:

Q. You had no interview with Mr. Warner at all on this subject?

A. No, sir.

Q. You do not know—you did not know that Mr. Warner was personally interested in the title at the time you made the search, did you?

A. I think not; I am not positive about it.

W. E. EDMONSTON.

ROB'T L. MILLER, *Examiner.*

WASHINGTON, D. C., *February* 21, 1898.

ERWIN C. BAUMGRAS, a witness produced on behalf of the complainant, being first duly sworn, was examined, and testified as follows:

By Mr. KEANE:

Q. Where do you reside?
A. Washington, D. C.
Q. How long have you resided here?
A. Nearly all my life.
Q. What is your occupation?
A. Real-estate broker.
176 Q. How long have you been engaged as a real-estate broker in Washington?
A. About six years.
Q. During that time have you been actively engaged in buying and selling real estate in the District of Columbia?
A. Yes, sir.
Q. You are acquainted with the values of real estate in Washington?
A. Yes, sir.
Q. Are you acquainted with the property located on the northwest corner of N. H. avenue and Q street, known as lots 1, 2, 3, and 66, square 134?
A. Yes, sir.
Q. Were you acquainted with the value of that property in April, 1896?
A. Yes, sir.
Q. What, in your opinion, was the value of that property in 1896?
A. I regarded the property worth at that time not less than $50,000 and not more than $60,000.
Q. Did you have that property on your books for sale?
A. Yes, sir.
Q. At what price?

Mr. DARLINGTON: Objected to as immaterial.

A. At $55,000 and a fraction.
Q. Do you remember when that property was first placed on your books?
A. I think in 1892—between 1892 and 1893—somewhere about that time.
Q. Did you make a sale of property in that immediate vicinity in the year 1896?
A. Yes.
Q. Please mention what property you sold in 1896, where it was located, and at what price you sold the property.
A. I sold the Church of the Holy Cross property, known as the triangle there on Dupont circle.
Q. Give its boundaries, if you please.

A. Bounded by Massachusetts avenue, 18th and P streets—for $45,000 cash—$8 a foot.

Q. What was the date when that sale was made?

A. October 26, 1896.

Q. How did the real-estate market in October, 1896, compare with the real-estate market of April, 1896?

A. It was harder to sell property in October. The time I sold this property it was the very worst time to sell property, because we did not know at that time whether Bryan was coming in or not. At that time Riggs & Co., over here, I understood, would hardly loan money on Government bonds.

Mr. DARLINGTON: I object to testimony as to Mr. Baumbras's understanding, and move to strike it out.

Q. Will you kindly state what the facts and circumstances were that entered into your judgment in placing the valuation that you have mentioned on the property on the northwest corner of N. H. avenue and Q street?

A. In the first place, it is 112 feet front, a triangular-shaped lot, practically all front, with no waste ground. Next, it was a northwest corner. Next, the fact that such a house as Leiter's and
177 Whittemore's, Schneider's and the row of houses opposite, Clover's—that row extended all around this lot. Then, again, it was my opinion at that time that N. H. avenue was the coming avenue of Washington.

Q. Are you still of that opinion?

A. I am still of that opinion, for the reason that nothing but the very finest houses have been built thus far, unlike Massachusetts avenue and Connecticut avenue, which are practically built to the boundary.

Q. Have you dealth much in property in that vicinity? If so, state how much property in value you have sold in the past few years up there.

A. About $200,000 worth immediately around this lot.

Q. While this property was on your books for sale, did you have any person or persons who were engaging for the purchase of it?

A. Yes, sir.

Q. Did you have many demands for it?

A. Yes.

Q. Were any offers made for it?

A. Yes; a number.

Q. Will you state who made any offer for that property?

A. Congressman George F. Huff.

Q. Who else?

A. Barr & Sanner.

Q. Any one else?

A. Yes. Shall I name them whether dead or alive?

Q. Yes.

A. R. Goldsmith. I cannot recollect right now any others.

Q. Any others?

A. Yes. I cannot think of any others just now.

Q. Did you submit any of these offers?
A. Yes.
Q. Did you submit them all?
A. Yes. They were offers and submitted, I suppose, at that time.
Q. What answer was received from the complainant?

Mr. DARLINGTON: I object, unless the answers are produced, as it is incompetent to prove such testimony by parole.

Q. It does not appear that they were in writing. I do not know that they were in writing at all; nothing of that kind here. Go on and state whether they were accepted or not at that time.
A. They were declined by Mrs. Godfrey.
Q. Will you state what the respective amounts were that were offered by the persons you have mentioned without going into details?
A. Yes; I can do that.

Mr. DARLINGTON: Before this question is answered, I desire to interrogate the witness as to the character of the paper from which he appears to be reading.
The WITNESS: It is just a little memorandum.

By Mr. KEANE:

Q. Is that to refresh your recollection?
A. That is to refresh my recollection.
By Mr. DARLINGTON: From what was that memorandum made?
A. From the sale of the triangular square of ground, the Church of the Holy Cross. It was a memorandum made on the date on which I sold the Church of the Holy Cross, Dupont circle.
178 Q. From what is the memorandum made?
A. From my press copy.
Q. Can you recollect the facts without that data?
A. Here is another date here of the Huff offer.
Q. From what is that made?
A. From the press-copy book.

By Mr. KEANE:

Q. Now, go ahead and answer the question.

Mr. DARLINGTON: We object to anything that comes in this shape from the press-copy book as immaterial, and call for the production of the book itself.

Q. Go right ahead.
A. I made an offer on October 4, 1893, for Mr. George F. Huff to Mrs. Godfrey for this square, corner of N. H. avenue and Q street, and her house, No. 1706 Connecticut avenue.

By Mr. DARLINGTON:

Q. Was that in writing?
A. That was in writing.

Mr. DARLINGTON: We object to any testimony in regard to the

matter as irrelevant, and ask that the writing itself be produced, which is the best evidence.

The WITNESS: Do you want me to state the amount?

By Mr. KEANE:

Q. Please state what the amount was you were authorized to offer; state the amount you were authorized to offer to Mrs. Godfrey.

Mr. DARLINGTON: Objected to, as the offer is immaterial, and I submit the rule against offering inferior evidence cannot be evaded in that way.

Q. You say you submitted an offer?
A. Yes, sir.
Q. Did you submit the offer you were authorized to submit?
A. Yes, sir.
Q. What offer were you authorized to submit?

(Objection repeated.)

A. I offered her exchange for other property aggregating $68,400 and some odd for the two properties, which was about $50,000 for the N. W. corner of N. H. avenue and about $18,000 for the Connecticut Avenue property, which Mrs. Godfrey declined, other property and part cash.

Mr. DARLINGTON: I object to any testimony as to the offer or declination of it, it appearing that both are in writing and should be produced.

The WITNESS: There are two offers I made which I have no writing of.

Q. Do you remember what they were?
A. I remember the offer I made for Barr & Sanner.

179 By Mr. DARLINGTON:

Q. Was that in writing?
A. No, sir; I have no writing of that; no memorandum of it.
Q. Was it made in writing?
A. I think not.
Q. Do you know?
A. When I made an offer I made a memorandum on a piece of paper, but I did not make any record of it; at least I cannot find any record of it.
Q. Do you know whether the offer was made in writing?
A. It was made orally. I went to Mrs. Godfrey. I think she was stopping at the Normandie hotel, and I may have given her a record of it.

By Mr. KEANE:

Q. State what it was.
A. It was offering her a row of houses on the northwest corner of R. I. avenue and 15th street. I took Mrs. Godfrey all through those houses. It was before any of the houses had been sold by Barr &

Sanner. The houses were encumbered and her lot was incumbered. I do not remember exactly what the offer was, but it was, no doubt, putting the two properties at the asking price of both parties in exchange for properties. The offer I made from Mr. Goldsmith——

By Mr. DARLINGTON:

Q. Was that in writing?

A. No, sir; they were the same circumstances as the Barr & Sanner.

By Mr. KEANE:

Q. This is another offer you are talking of now?

A. Yes; Mr. Goldsmith's was an offer to give her her price, $55,000, for her lot, also on the corner of N. H. avenue and Q, putting in three or four houses that were encumbered and, I think, $6,000 in cash. Mr. Goldsmith at the time consulted with John B. Wight.

By Mr. DARLINGTON:

Q. How do you know he did?

A. I was there. Regarding the value or his idea of the value of Mrs. Godfrey's corner, all I remember distinctly is that after figuring up what the property would have stood Mr. Goldsmith had Mrs. Godfrey accepted the offer that it was in the neighborhood of $48,000 for her lot; that is what it would have stood Mr. Goldsmith, although, of course, it was an exchange; that is the only way I can explain it—an exchange. She was asking $55,000, and the property that he was putting in, there was a fancy price on that.

Mr. DARLINGTON: Objected to unless it appears that the witness has some personal knowledge of what Mr. Goldsmith's property cost him.

Mr. KEANE: I consent that that last remark be stricken out.

180 By Mr. KEANE:

Q. Was this offer of Mr. Goldsmith accepted or declined?

A. It was declined.

Q. Now, will you state your opinion of the respective values of the property on the northwest corner of N. H. avenue and Q street, and the property known as the Holy Cross property, on Mass. Ave. and P street and 18th street?

A. The Holy Cross Church property has three fronts, which makes it quite expensive to build on, and very few parties would want to go to that expense in buying such a lot as that. The northwest corner of N. H. avenue and Q street being only practically one front would be apt to attract more buyers.

Q. Is that distinction in your opinion more favorable than N. H. avenue and Q street, or the Church of the Holy Cross property?

A. It is hard to tell. Some would admire one and others would admire the other.

Q. How about the property in the neighborhood of the Holy Cross property; is it all built up?

A. Yes; it is all built up on Mass. avenue.

Q. I say the property in the immediate neighborhood of the Holy Cross property; is it all built up?

A. Oh, no; not north of it.

Q. Property in the neighborhood on which it faces?

A. It is a well-known fact that Mass. avenue is all built up, but north of the Church of the Holy Cross there is vacant ground left next to the Boardman house.

Q. Will you state how you would respectively estimate the values of those pieces of property? Would you say they were of about equal value, or that one was more favorable than the other, or what would you say on that subject?

A. There is no question about that, that the Dupont Circle triangle is such an acute angle that it was quite difficult to put on it a spacious house. A great deal depends upon the buyer. They are both choice properties.

Cross-examination.

By Mr. DARLINGTON:

Q. What exposure has the N. H. Avenue and Q Street property that you are speaking of?

A. South and east.

Q. On what streets?

A. Q and N. H. avenue.

Q. What exposure has the Holy Cross property?

A. Every exposure.

Q. State on what streets.

A. Mass. avenue, 18th and P streets.

Q. It also fronts on Dupont circle?

A. Oh, yes.

Q. Do we understand in your opinion the N. H. Avenue property is as favorably located as the Holy Cross property?

A. That would depend altogether upon the market more than the buyer.

Q. We are now speaking of market values, the things that affect market values.

A. If I were going to build a house I would rather have N. H. avenue and Q street.

181 Q. I have not asked for your individual preference, but your opinion of market values. Is property situated as the Holy Cross property is, with four exposures, in front of one of the most desirable circles in the city, only equal in location to this property located on N. H. avenue and Q street?

Mr. KEANE: I object to the statement that a triangular piece of property has four exposures.

A. As I explained before, the triangle being an acute angle, it is hard to tell which is the best.

Q. Although we call it a triangle, it does, in fact, abut on Mass. avenue, P street, 18th street, and Dupont circle, does it not?

A. Yes, sir.
Q. How long did you have this property on your books?
A. Which property?
Q. The N. H. Avenue and Q Street property, spoken of here as the Godfrey property.

Mr. KEANE: You mean how long prior to April, 1896?

Q. How long did you have it on your books?
A. I think three years or so—three or four years.
Q. That is, from 1892 or 1893 on?
A. Yes, sir.
Q. How did it get off your books, if it ever did?
A. It is not off my books yet.
Q. Did you ever find anybody who wanted to buy it for money?
A. No, sir; I have not.
Q. All trades?
A. Well, yes; I had people who would buy it for money, but they did not care to pay the price asked.
Q. Who were they?
A. I will answer that question by saying that it depends upon how much money. You say for money?
Q. Who were the parties who offered to buy it for money, if anybody did?
A. I offered it to all these parties for money.
Q. My question is, Who offered to buy this property for money?
A. I would have to refer back to the purchaser at that time. I have offered that property to a dozen people or more who were looking for lots, and they might have bought it if the price had been very low.
Q. My question is, Who ever offered to buy this property for money at any price?
A. I never made any offer absolutely of cash for the property. I misunderstood you. I understood you to say would people buy it for money; of course they would if the price suited them.
Q. Did you ever have any offer from anybody to buy it for cash?
A. No, sir.
Q. What was the history of real estate from 1892 to 1896 in this city?
A. Real estate began to drop in 1892 all over the country.
Q. How was it in 1892 or 1893?
A. It began to drop a little after 1892.
Q. Was that drop gradual or precipitous during any part of those years?
A. It was a gradual depression.
182 Q. Was it a pretty rapid depression after the panic of 1893?
A. Not so much in Washington as other cities.
Q. Without reference to comparison, it is not a fact that property went down rapidly in Washington at those dates?
A. Not choice property.
Q. What was the percentage of the fall in 1893 and 1894 in Washington?

A. Very little in choice property.
Q. About how much?
A. That is pretty hard to tell in Washington.
Q. You have not been dealing in property outside of Washington during these years?
A. Yes, sir; I have.
Q. Where?
A. In New York.
Q. Have you an office in New York?
A. No, sir.
Q. Had you one at any time?
A. No, sir.
Q. As a matter of fact, has not your business been almost exclusively in Washington?
A. Yes, sir.
Q. Can you not tell us what your observation of Washington is without referring to outside cities?
A. Yes, sir; I can tell you about properties. Choice localities—we have not known of any occasion where gilt-edged corner property as well located as this has dropped, for the simple reason that it is owned by strong people. I suppose if they had to sell they would have had to make a concession; but other properties around town have depreciated in value, for the want of interest in real estate, to the extent of ten to twenty-five per cent., and possibly more.
Q. You think what you call choice corner properties have not depreciated? By that you mean they have not been sold?
A. Yes. I sold this corner I refer to in the hardest times at $8 a foot.
Q. To whom did you sell it, and for whom?
A. For Mrs. Van Dyke.
Q. To whom?
A. Herbert Wadsworth, of the Knickerbocker Club, of New York.
Q. With that exception, do you know of any property that has sold for any such figures within the last two years?
A. I sold a lot about that time to Beriah Wilkins, not far from this Church of the Holy Cross—the next block—all cash, belonging to General Anson G. McCook, for $5 a foot.
Q. Where was that located?
A. It was located next to 1709 Mass. avenue. The lot was twenty-five by a hundred, and it was considered a very good price, considering the times.
Q. Who bought that property?
A. Beriah Wilkins, of the Post.
Q. That was the case of a man who was buying property immediately adjoining his own house?
A. Yes.
Q. Are you not aware that property so situated brings a better price than when sold to indiscriminate purchasers?
A. I do not know what he bought it for. I sold it to him.
Q. My question is, Are you not aware that persons buying prop-

erty adjoining their own premises pay more for it than other persons generally?

A. They usually wait and get it for less if they can.

Q. Did Mr. Wilkins tell you at the time that he regarded
183 that price very high and he was only buying it because it was next door to his house—that is, paying that price because it was next door to his own house?

A. I don't remember whether he did or not. I do know that he simply paid what General Anson G. McCook paid for it several years ago.

Q. How long ago?

A. He had been carrying it two or three years.

Q. How long ago? my question is.

A. Two or three years.

Q. When was the Beriah Wilkins sale made?

A. I have not the date of that.

Q. You mean he paid for it a price after the panic which General McCook paid for it before?

A. Yes, sir.

Q. You refer to your submission of certain offers to Mrs. Godfrey and her declination of those offers. In how many instances was that in writing?

A. Only one press copy.

Q. Which offer was that?

A. Mr. Huff's?

Q. Will you produce your correspondence with Mrs. Godfrey in regard to this property?

A. I will give you the press copies.

Q. But you have no press copies of Mrs. Godfrey's replies?

A. She declined; that is all.

Q. Have you her correspondence?

A. No, sir; I brought them together at the Normandie hotel—Mrs. Godfrey and Mr. Huff.

Q. Have you any letters from Mrs. Godfrey?

A. She was here at the time, so there was no occasion for letters.

Q. Did you ever receive any letters from her on the subject of these lots?

A. Outside of Mr. Huff's offer?

Q. I think my question is plain.

A. I cannot understand it.

Q. Have you any letters from Mrs. Godfrey in regard to these lots?

A. For the sale of these lots?

Q. Yes.

A. I don't know that I have.

Q. If you have, will you produce them when you sign your deposition?

A. If I have, yes.

Q. What was the Huff offer?

A. I will have to refer to the letter——

Q. (Interposing.) Can you not tell us what it was without looking for it?

A. No, sir.

Mr. DARLINGTON: We will have to suspend the examination in regard to this point until he gets that letter.

Q. What was the Barr & Sanner offer?

A. I do not recollect how the mortgages stood on the houses owned by Barr & Sanner on the northwest corner of R. I. avenue and 15th street, but it was an offer of deeding those houses subject to the trusts to Mrs. Godfrey, and taking Mrs. Godfrey's lots subject to her trusts.

Q. How many houses were there?

A. That I do not quite recollect, whether they were all the houses or whether only three or four of them. There were five of them altogether, but I do not recollect whether this offer was in regard to four of them or all five.

Q. In your experience as a real-estate broker, do you not know it is much easier to get offers for people's property by way of
184 any kind of exchange than to effect a sale of such property at any kind of price?

A. Oh, it is easier to get an exchange than a cash sale.

Q. And it has been since the panic?

A. Yes, sir.

Q. At any kind of a price?

A. I do not know as I exactly understand that.

Q. Is it not a fact in these exchange sales the prices on both sides are put far above what would be realized at a money sale?

A. Not always.

Q. Is not that the rule?

A. I do not know what other brokers do. I usually get them down to a cash basis on both sides.

Q. How is it that you would only sell Mrs. Godfrey's property to any of these parties if the offers amounted to a cash offer?

A. Because she was opposed to taking other property in exchange.

Q. And do you mean to tell us that the figures at which Mr. Huff offered his property were its actual cash value at the time?

A. That is a pretty hard question to answer.

Q. And do you mean to say that the prices at which Barr & Sanner offered their houses were the cash values at the time?

A. They were buying the houses in at prices they were willing to take for them in cash.

Q. That is not the question, and I think you know it is not.

A. I am not willing to answer that question. So far as that Barr & Sanner offer is concerned, I have nothing to go by except my memory that Mrs. Godfrey's property was put in at her price. She asked $55,000, while Sanner could not increase the price of his houses at more than he was asking for them at cash sales.

Q. And do you also mean that the Goldsmith offer put the Goldsmith property at the actual cash value at that time?

A. The circumstances were similar.

Q. What do you mean by that?

A. That is, people who have property for sale usually have an asking price.

Q. That asking price is materially above what they are willing to take?

A. It is so in a great many cases.

Q. Is it not so nearly always?

A. I cannot say it is nearly always so.

Q. Is not that your experience?

A. No, sir.

Q. What is the rule?

A. The rule is as I have stated; it is so in some cases. Lots of people, I know, would not take a cent less than they ask.

Q. In your knowledge and experience, men who offer property in trade usually ask their lowest cash price, do they?

A. You did not ask me that.

Q. I ask you now.

A. The so-called traders that have sprung up since the depreciation in real estate usually put a higher price on their properties than they would take for them cash.

Q. And that is confined to the new trade in response to the depressions?

A. That has been my experience. You are talking about traders; you are not talking about anything else.

Q. I have not asked you anything about traders.

A. There are plenty of people here who will not trade.

185 Q. Without playing on words, both or either of us, what I want you to tell me is whether it is not a fact well known to you and other men who deal in real estate that persons who offer their property in exchange generally put the price upon it above what they would ask for it in cash.

A. Yes, sir—that is, exchange with traders.

Q. That is not confined to what you call traders nor to the times since the depression?

A. Yes.

Q. That has been the common experience here for years, has it not?

A. I don't know. I have been in the real-estate business for six years; I don't know what it was before that.

Q. What class of men do you refer to as traders?

A. People who have their properties encumbered and cannot borrow any more on them.

Q. Do you refer to men like Barr & Sanner?

A. Had the Barr & Sanner trade been made they would have deeded to Mrs. Godfrey houses upon which they had borrowed all they could, and they would have taken her northwest corner of N. H. avenue and Q street, subject to a $13,000 mortgage, and simultaneously increase that mortgage to some $5,000 or $6,000 more, thereby getting that $5,000 or $6,000 more in cash. That was the incentive.

Q. My question is, whether they were the class of men you refer to as traders?

A. Oh, yes.
Q. When was the Huff offer made?
A. October 4, 1898.
Q. That was before the depression had progressed very far, was it not?
A. No; I think it was on us then.
Q. Do you think it had progressed anything like as far as it had in 1896?
A. No; it was worse in 1896.
Q. When was the Barr & Sanner offer made?
A. That I cannot recollect.
Q. Before or after the Huff offer?
A. After.
Q. Can you give us any information at all as to about the time that occurred?
A. I cannot tell exactly. I can tell by asking General Robertson when I was in his office. It was when I was in the office of General Robertson.
Q. When was the Goldsmith offer made?
A. About the same time.
Q. Goldsmith is dead?
A. Yes, sir.

By Mr. KEANE:

Q. Did you examine these offers before you submitted them?
A. Yes.
Q. Did you consider the valuations of the properties offered in exchange with the cash likewise offered, as to whether they were, in the valuations set upon the property so offered, a fairly reasonable value of such properties at that time?
A. I naturally formed my own conclusions on both sides of the transaction, and remember distinctly, in reference to the offer made by Mr. Goldsmith, that putting the properties that he wished Mrs. Godfrey to take at their cash value her lot would have stood him, had she accepted, $48,000.

186 Q. State whether or not this property was held by the owner at a fixed sum very stiffly.

Mr. DARLINGTON: Objected to, first, on the ground that it is leading; second, it is incompetent, unless the witness's sources of knowledge are first shown.

A. Mrs. Godfrey always held that lot at $55,000.

Mr. DARLINGTON: Objected to as incompetent. A fact is incapable of being proved in this way.

Q. How would you say about Congressman Huff and Mr. Goldsmith—whether they were traders or not—what you call traders?
A. Yes; they were inclined to make exchanges of real estate.
Q. Have you fixed the dates of all those offers?
A. The Huff offer I can show a press copy of.
Q. You do not remember the dates?

A. I do not remember the dates of the other two offers.

By Mr. DARLINGTON:

Q. You have repeated in your redirect examination what you struck out in your examination originally, that, putting Mr. Goldsmith's properties in what you call cash values, Mrs. Godfrey's properties would have cost $48,000. How do you know the cash values of those properties?

A. In my opinion.

Q. In your direct examination you stated that, putting in the Goldsmith property at what it stood him, it would have been $48,000?

A. That is a mistake.

Q. What were the Goldsmith properties?

A. That I cannot quite recollect.

Q. How, then, can you recollect what their cash value was?

A. I will tell you how. I recollect one house, No. 1712 Q street, that he put in for $12,500. That house is like the rest of the houses on the south side of Q street, none of which sold for less than $12,500 by T. F. Schneider, and the way I placed my value, in my personal knowledge, to get at what the property actually stood Mr. Goldsmith in cash is that I happened to know that he got these houses in exchange, so that it only stood him $11,500. Thus he would make $1,000 on that one transaction, one house.

Q. He got the property in exchange, which species of trade you have already said was higher than cash, and put it up at $1,000 higher than it cost him?

A. That is right. In figuring that up in my mind I found what it cost him. It was unknown to me, and I think to Mrs. Godfrey as well, but it may possibly have been known to Mr. Goldsmith that the property, while he was giving her $50,000, stood him less.

Q. You happened to know what 1712 Q street cost him?

A. Yes.

Q. What did the other houses that you offered him cost, if you know?

A. That is the only house I remember taking Mrs. Godfrey through.

187 Q. And are we to understand that you do not know what the other houses cost him?

A. I do not know what other properties he put in. I think there were some smaller properties.

Q. As whose agent were you acting in these attempted negotiations?

A. I was agent for both of them, both Mr. Goldsmith and Mrs. Godfrey.

Q. Acting as kind of umpire or neutral party to them?

A. No, sir; as agent.

Q. How could you act as agent for both of them?

A. I don't know. That is what we do in the business.

Q. And this applies to all three of the offers you say you received?

A. Yes, sir.

Q. Was it upon your advice that Mrs. Godfrey declined?
A. I advised her to take them.
Q. Do you know why she did not?
A. I don't know why she did not take them; I cannot tell why.
Q. She examined the properties in person?
A. Yes, sir; she went to look at them with me.
Q. *Apparently* relying upon her own judgment?
A. I do not know whether she took an architect or anybody along with her after I showed her the property. She and I went together.
Q. As far as you know she relied upon her own judgment?
A. She relied upon her own judgment as far as I know. She might have. I can answer that question for you if you want me.
Mr. KEANE: The fact is that she declined all those offers?
The WITNESS: Yes, sir; she declined them all.

(At this point Mr. Baumgras left the stand, and a few minutes afterwards returned with the letter-press copy above referred to.)

By Mr. DARLINGTON:

Q. Can you now produce the letter-press letter to Mrs. Godfrey in reference to the Huff offer of which you have spoken?
A. Yes (handing Mr. Darlington letter-press copy book).

Mr. DARLINGTON: I offer this copy in evidence, and ask that the examiner copy it into the record at this point.
The letter-press copy is as follows:

"OCT. 4, '3.

"Mrs. Ma. A. Godfrey.

"DEAR MADAM: I am authorized by Mr. George F. Huff to make the following proposition, viz:
"He to deed you his two northwest corners as follows:

"N. H. Ave., at $5 per foot	$34,156	
"Subject to trust of	8,000	
	$26,156	equity.
188 "16th street, at $5	$20,000	
"Subject to trust of	2,250	
	$17,750	equity.
"Two equities amount to	$26,156	
	17,750	
	$43,906	
"He to pay you in cash	3,000	
"He to give you car trusts, 4% bonds	2,000	
	$48,906	

"You to deed him corner of N. H. avenue and Q street, subject to trust of $13,500, and No. 1706 Conn. Ave., subject to trust of $6,000.

Mr. Huff desires an answer at one o'clock today. I was with him last night until nearly one o'clock, and I know this is the best he will do, and I advise you to accept it at once, as it is allowing about $50,000 for your lot and $20,000 for your house.

"Yours truly,

"(Signed) E. C. BAUMGRAS."

Q. What was this N. H. Avenue property that you put at $5 a foot?

A. That was the northwest corner of N. H. avenue and Riggs street.

Q. What was the 16th Street property you refer to?

A. The N. W. corner of 16th and Pierce place.

Q. The title to these properties was in Mr. Huff?

A. Yes, sir.

Q. So that the record office will verify your recollection of their location?

A. Yes, sir.

(Here Mr. Keane and the witness held a conversation.)

Mr. DARLINGTON: Let the record show that I object to any private conversation with the witness while on the stand.

By Mr. KEANE:

Q. I want you to look at this diagram (handing witness Exhibit E. C. B. No. 1), and state whether you made that diagram yourself.

A. I made that diagram.

Q. Is it correct?

A. I made it at the request of Mrs. Godfrey. I think it is correct. It is not drawn on a scale. It shows the size of her lot there, the frontage, and the various properties, and who the owners are—improved.

Mr. KEANE: I now offer that diagram in evidence.

The WITNESS: Yes; I made that at the request of Mrs. Godfrey.

189 By Mr. DARLINGTON:

Q. Does this show the Holy Cross property?

A. Part of it.

E. C. BAUMGRAS.

ROB'T L. MILLER, *Examiner.*

BEVERLY H. ROBERTSON, a witness produced on behalf of the complainant, being first duly sworn, was examined and testified as follows:

By Mr. KEANE:

Q. Where do you reside?

A. In this city.

Q. How long have you resided here?

A. Twenty-one years. I came here in 1877.

Q. What is your occupation?

A. I am a real-estate broker.

Q. How long have you been engaged in that business?

A. About 12 or 13 years. Since 1885, I think.

Q. Have you bought and sold real estate in Washington during that time?

A. Not a great deal. I bought some and sold some, but I have not been very——

Q. (Interposing.) In what part of the city have your operations been principally?

A. Altogether in the northwest, pretty much; nearly altogether in the northwest.

Q. Are you acquainted with the values of the real estate in the northwest?

A. Yes, sir; pretty well.

Q. And were you acquainted with the values in 1896?

A. Yes.

Q. Are you acquainted with the property on the northwest corner of N. H. avenue and Q street?

A. Yes, sir.

Q. Known as lots 1, 2, 3, and 66, square 134?

A. Yes, sir.

Q. In your opinion what was the value of that property in April, 1896?

A. I have already written my opinion about it.

Q. Never mind that.

A. I thought the property was worth about $50,000 or fifty-odd thousand dollars, under $55,000 and over $50,000, on account of its location, and being a northwest corner, and having no loss, waste ground there, and being in a very desirable neighborhood, and, owing to some sales that had taken place around there, I thought it was worth $8 or a little over a foot. That was my idea about it.

Cross-examination.

By Mr. DARLINGTON:

Q. You refer to having written your opinion about this property?

A. Yes, sir; I wrote an opinion about it.

Q. About when and to whom?

A. I wrote my opinion to Mrs. Godfrey.

Q. About when?

A. I don't remember when it was when I had the property in my charge.

Q. How long did you have the property in your charge?

A. For several years, I think.

190 Q. Can you tell us approximately between what dates or years?

A. I cannot without consulting my books. I had it until the transfer was made in New York. I had it up to that time and several years before, two and a half years before.

Q. Up to the time Mrs. Godfrey conveyed it to Dutton?

A. Yes, sir.

Q. What offers, if any, did you receive for it?

A. I did not have the property except for rent. I had it for sale, but had no board on it. I never advertised it for sale. I had it for rent.

Q. Did you make any efforts to sell it?

A. I did not advertise it, because my board was not allowed to go on there, and I very seldom advertise until people can see where to find me from the board on the property. I do not think it pays very well to do it. I did not make much effort to sell it, any more than talking it up. I talked with people who came in the office to inquire about property; told them it was a very choice lot, and did all I could in that way. I do not think I ever advertised it for sale.

Q. Among these people that you talked to did you ever find any one who was willing to give any such price?

A. No, sir; they never made any offer.

Q. You refer to some sales made around there. Can you tell us some of those sales?

A. I referred to a sale, made 7 years before that, of a piece of property on Dupont circle belonging to Mr. Yulee, and that sold for $13 a foot. I knew that because I examined into it.

Q. How did you learn that sold for $13 a foot?

A. I learned it from people who knew, and I inquired about it, I think, at the office.

Q. At what office?

A. At the record office down there. I got some one to inquire if that was a fact, and they said yes.

Q. Is there a deed on record which recites a consideration of $13 a foot?

A. Yes, sir.

Q. Whether that was the actual price or not, you have no actual knowledge?

A. It was the price put down as having sold for.

Q. You are aware, are you not, in real-estate transactions $10, and sometimes a higher price, is cited as the consideration in a deed, while the actual price paid does not appear?

A. Yes, sir.

Q. About how long before 1896 was this Yulee sale made?

A. Two or three years.

Q. Four or five years, was it not?

A. I think so; three or four years.

Q. That was when property was at its height here, was it not?

A. I cannot say about property being at its height. Some people have held property at its height all during these bad times; have not made any concessions. They have not sold the property, it is true, but still they hold it up.

Q. Is it not a fact that in 1892 and 1893 the price of real estate here attained its highest price more than it has ever been since?

A. Yes, sir.

191 Q. Was not this Yulee property rather exceptional in its character?

A. I believe it was.

Q. It was a small lot with a great deal of public parking around it, which the owner could practically have without paying for, was it not?

A. Yes, sir.

Q. It was also improved, was it not; had a store on it?

A. It had a little drug store on it.

Q. Are you not mistaken in saying you never had a sign on this Godfrey property?

A. I never had a sign, for sale.

Q. You had a rent sign on it?

A. I had a rent sign all the time. That is my impression. I do not think I had. I am almost certain of it. It is possible I may be mistaken, but I do not think so.

Q. How did you learn of this transfer to Mr. Dutton?

A. I saw it in the papers. I think in the Journal.

Q. Do you remember Mr. Wine calling upon you in regard to this property about that time?

A. I think so.

Q. Did he tell you he had bought it or was about to buy it?

A. He told me he had the property. I don't know whether he bought it. I presumed he had, although I did not know.

Q. Did he tell you anything about the price he paid for it?

A. No, sir.

Q. Did not Mrs. Godfrey notify you in March or April that she had sold this property?

A. No, sir; I think not. If she did, I do not remember.

Q. Are you able to state positively that your sign for sale was not on this property?

A. I am very confident, because Mrs. Godfrey had her own sign there. It was a large sign and on the west side of the house, in the vacant lot, and the boys used to knock it down, and I had it set up against the house so that it would not be in their way while they were engaged in their games there.

Q. Would your books or any other data in your office show whether your sign was up or not?

A. I have nothing to show it was up; I do not believe it was up.

By Mr. KEANE:

Q. Do you know what was on the sign that the Godfreys had up on the property; do you know if the address was on it or not? Do you recollect that the address of Mrs. Godfrey was on the sign?

A. Her name was on it; that is my recollection of it.

Q. And her address; do you recollect of her address being on it?

A. I do not.

B. H. ROBERTSON.

ROB'T L. MILLER, *Examiner.*

92 JOHN F. LACEY, a witness produced on behalf of the complainant, being first duly sworn, was examined, and testified as follows:

By Mr. KEANE:

Q. Where do you reside?
A. Oskaloosa, Iowa.
Q. Are you a member of Congress from that district?
A. Yes, sir.
Q. You are residing here in Washington for the time being?
A. Temporarily.
Q. Do you recollect any inquiry ever having been made of you by Mr. Warner for the address of Mrs. or Miss Godfrey?
A. I do not.

Cross-examination.

By Mr. DARLINGTON:

Q. You were at one time a boarder at what is known as the Hotel Arno?
A. I was; in the winter of 1893.
Q. Mrs. Godfrey was also a boarder there, was she not?
A. She was there a short time only.
Q. Did you then know Mrs. A. K. Phillips?
A. Very well.
Q. And her son, Mr. A. K. Phillips?
A. Yes, sir; they sat at the same table with my wife and myself during that winter.
Q. Do you not recall meeting Mr. Warner on an F Street car about April, 1896, and his asking you where he would find Mrs. Godfrey, and you told him she had left the hotel long before that time?
A. I have no recollection of it.
Q. Do you mean to be understood as saying that such a conversation did not occur or that you do not recollect?
A. There is nothing to recall it to my mind, and there is nothing in the circumstances that now makes me think I would recollect it or would not recollect it. Mr. Warner wrote me about it, wanting to know if I recollected it. I have thought about it, and I could not recall then and cannot recall now any such conversation.
Q. You cannot recall whether it took place or did not take place?
A. I have no recollection of such conversation. I met Mr. Warner occasionally, and he was coming and going, calling on his people there, in 1893, when I first met him. I have met him repeatedly ever since.
Q. What we wish to get at here is whether or not you feel able to say that such conversation did not take place, whether it did or did not?
A. I cannot answer it more definitely, and I will say after getting a letter from Mr. Warner I studied about it before answering him to

see whether I could recall such circumstance, and I have not the slightest recollection of any such occurrence.

JOHN F. LACEY.

Sworn to and subscribed to before me this 15th day of April, 1896.

ROB'T L. MILLER.

193 DANIEL H. KENT, a witness produced on behalf of the complainant, being first duly affirmed, was examined, and testified as follows:

By Mr. KEANE:

Q. Where do you reside?
A. Washington, D. C.
Q. How long have you lived here?
A. Since 1890.
Q. Are you acquainted with the value of real estate in Washington?
A. I have studied it pretty fully, having dealt considerably myself in it.
Q. How long have you been acquainted with the value of real estate in Washington?
A. For half a dozen years.
Q. Have you bought and sold property here and made exchanges of property?
A. Yes; a good bit on my account largely.
Q. And in what part of the city are you best acquainted with the values of real estate?
A. In the northwest has been most of my operations.
Q. Are you acquainted with the northwest corner of N. H. avenue and Q street, being lots 1, 2, 3, and 66 of square 134?
A. Yes, sir.
Q. Were you acquainted with the value of that property in April, 1896?
A. Yes. I have had my own view of it—not from others, only my own view of it.
Q. What would you consider that property worth a square foot?
A. I think it is worth between $7 and $8 a foot.
Q. Did you ever make an offer for that property?
A. Yes.
Q. Will you look at the paper I now hand you and state whether that was the offer you made and tell us the date of the offer?
A. (Examining paper.) This is the offer I made.
Q. What is the date of it?
A. December 12, 1895.

Mr. KEANE: I now offer that in evidence.
The paper referred to is as follows:

"WASHINGTON, D. C., *Dec'r* 12, 1895.

"Letter box 106, Atlantic bldg.; home, 2224 N St. N. W.

"Mrs. L. A. Godfrey.

"DEAR MADAM: Through Mrs. Morrill, as your agent. If your property has 17,500 against it, and not $15,000, as I thought, I will make you the following offer of exchange for early acceptance, if I have not disposed of my property before you accept; will give you..... $51,000 for your Q and N. H. Avenue lots.
Trusts 17,500

$33,500 equity, for which I will give you

2224 N St. N. W., my home, 16 rooms, elegantly finished, and worth—

194 Sum asked..... $28,000
Trusts $9,000
5,000
14,000
$14,000

1259 23rd St..... $10,000
Trust 4,000
$6,000

2232 N St. N. W..... $10,500
Trust 4,500
6,000
12,000
$26,000

Or 1255, duplicate of 1257, & next it; cash..... 3,500
2nd trust..... 4,000
$33,500 equity.

or 2230 N St., duplicate of 2232, & next it, each with similar trusts & equity of $6,000 in each; will add another house, say 1255 or 2330; equity..... $6,000
and cash..... 1,500
$7,500

in lieu of $3,500 cash and $4,000 2nd trust. Let us fix up at early date, if at all. I must exchange property to buy. If before we close I own 1113 11th St. N. W., would be willing to give her it in place of 2224 N St. N. W. for $30,000; trust, $15,000; equity, $15,000, $10,000 more than equity in 2224 N, and then I would make trust yours $1,000 less, or adjust it some such way.

Truly,
(Signed) D. H. KENT."

Q. Was that offer accepted or declined?
A. Declined.

Q. What is your occupation?
A. I am in the Government service, but have been operating in real estate for ten or a dozen years before I came here.
Q. Are you a builder?
A. I am not a mechanic, but I have built over 100 houses.
Q. Here in Washington?
A. No, sir; not here; here and elsewhere.
Q. How many houses have you built here?
A. I have built about 20 houses here.

Cross-examination.

By Mr. DARLINGTON:

Q. Where did you live before you came to Washington?
A. Philadelphia,
195 Q. What was your business there?
A. Real-estate business.
Q. How long have you been in the real estate — altogether?
A. I have been operating in real estate for myself and for others since 1870, at least.
Q. I am asking about your occupation, not how long you have been operating in real estate.
A. I was operating in real estate while I was in Philadelphia for several years.
Q. What was your occupation during those few years?
A. Real estate.
Q. What was your occupation prior to that time?
A. Mercantile business as well as real estate.
Q. What business?
A. Iron and hardware business.
Q. Where?
A. Philadelphia and Wilmington, Delaware.
Q. Where was your place of business in Philadelphia?
A. 1009 Arch street.
Q. What is your business here in Washington?
A. I am in Government service.
Q. In what department?
A. I am in the Indian bureau.
Q. Clerk in the Indian office?
A. Yes, sir.
Q. What salary?
A. Is it necessary for me to answer as to all my private business?
Mr. WILSON: Oh, yes.
The WITNESS: $1,200.
Q. And you have employed your time outside of the office in operating, as you call it, in real estate to some extent?
A. Yes, sir.
Q. What was the basis of your estimate that this property was worth $7 or $8 a square foot?
A. My judgment.
Q. What did you base that judgment on?

A. On my knowledge of real estate.

Q. Do you know any uses it would be put to so that it would yield return on that amount of money?

A. I think so.

Q. What?

A. Just the purpose I wished to buy it for, to build on.

Q. You think that you could build on that property and make an income on the ground at $8 a square foot?

A. I think I could at the price I named, $7 or $8 a foot.

Q. What kind of houses would you build?

A. Now, I will tell you. I would not object to going into this if it did any good; but, Mr. Darlington, it is just this way: I am here before real-estate men and I do not think it is necessary for me to tell all my private business. I will do it in a moment if it will serve any purpose.

Mr. WILSON: The best way is to tell it.

The WITNESS: I think it would pay to build a small hotel there, a very elegant hotel.

Q. At what cost?

A. About $100,000 with the ground, maybe $125,000.

Q. What capital have you for building such a hotel as that?

A. I have built two or three operations pretty nearly as large as that.

Q. Do you think that is an answer to my question?

Mr. KEANE: I think so.

196 The WITNESS: I think I can borrow that amount of money. That is what I thought when I made the offer.

Q. Have you a foot of ground here in Washington today that is not covered with mortgages?

A. Suppose it is all covered with mortgages?

Q. Have you a piece of property which has not more than one mortgage on it?

A. Yes, sir.

Q. What is that?

A. Well, I will say no; it is all mortgaged up.

Q. In this offer you say you made December 12, 1895, I observe the first piece of property referred to is 2224 N street N. W.

A. I did not see the letter, but I suppose so. I looked at it; I know it is my writing.

Q. You know whether or not it is included in the offer?

A. If it is there it is included in the offer.

Q. From whom did you buy that property?

A. I built it.

Q. Did you also build 1259 23rd street?

A. Yes, sir; I built all that property, or at least I built the two you have mentioned.

Q. From whom did you buy the ground on which 2224 N street is built?

A. Mr. Clark, the former president of the Central bank, and others.

Q. What was the cost of that ground to you?

A. Something less than $2.50, I think.
Q. How many feet of ground in the lot?
A. I don't remember now.
Q. How much less than $2.50 a foot?
A. Very little.
Q. What is the size of the lot?
A. Which lot?
Q. 2224 N street.
A. It is 25 by 75 by 25 by 34½.
Q. What do you mean by that?
A. It has a jog in it in the rear.
Q. And you do not know how many square feet of ground there are in the property?
A. Yes.
Q. How many?
A. 2,537 feet.
Q. How much less than $2 a foot did you pay for it?
A. I think about $1.90 a foot.
Q. Cash or trade?
A. Cash.
Q. What did the house cost you?
A. I don't remember.
Q. Can you not give us with reasonable certainty what it cost?
A. I cannot do it.
Q. How much less than $28,000 did the house and ground cost you?
A. I don't know.
Q. Did it cost you $20,000, the house and ground both together?
A. I believe it did with the others, altogether. I built 8 houses there.
Q. Still, do you not think you are better able to give the actual cost of this house than you are to give an opinion about ground you never owned?
A. No, sir; I cannot tell, because I built them altogether.
Q. You cannot tell us whether this house costs you $20,000 or not?
A. No, sir.
Q. Have you sold it since, or do you still own it?
A. Yes, sir.
197 Q. You mean you still own it?
A. Yes, sir.
Q. Did that house cost you $18,000, ground and all?

Mr. KEANE: He said he did not remember.

Mr. DARLINGTON: I object to the cross-examination being interfered with by interjections of counsel.

Mr. KEANE: I object to the cross-examiner repeating questions after they have been once asked and answered.

The WITNESS: I don't know.
Q. Did the construction of the building cost you as much as $7,500?

A. I think it cost a good bit more.
Q. About how much more?
A. I don't know.
Q. What does that house rent for?
A. It is not rented in full; it is partly rented now.
Q. What is the highest rent it ever brought?
A. I lived in it. It never has been rented until lately. I am renting it now in rooms; I have part of it rented.
Q. The house 2232 N street, you also bought that ground from Mr. Clark at the same price?
A. Yes, sir.
Q. Can you tell us anything about its cost, house, ground, and all?
A. No, sir.
Q. Did that house cost as much as $9,000, ground and all, 2232 N street?
A. I hardly think so.
Q. From whom did you buy 1259 23rd street; did you build that, too?
A. Yes, sir.
Q. From whom did you buy that ground?
A. Mr. Clark.
Q. What did the ground cost you?
A. Same price.
Q. How much ground is there in that lot?
A. I don't remember.
Q. Did that house and ground both cost you $7,500?
A. I don't know what it did cost.
Q. Do you still own it?
A. No.
Q. When was it sold?
A. Two or three years ago.
Q. What did it bring?
A. It was not sold for cash.
Q. What did it bring?
A. It was not sold for cash.
Q. A trade?
A. Yes, sir.
Q. Are you one of the gentlemen Mr. Baumgras has referred to as traders?
A. I don't know. You ought to ask him.
Q. You heard his testimony, did you not?
A. I don't know whether I am one or not.
Q. Now, can you give us any more information about the cost or value of 1259 23rd street or 2232 N street and the other property mentioned in this alleged offer of December 12, 1895?
A. No, sir; I cannot, because I built them altogether, and I have no data here to give it.
Q. Can you tell us what they did cost you in ground and construction?
A. No, sir; I cannot tell that, either.

Q. So that this house that you offered to put in this trade at $28,000, you cannot tell us whether it cost you $18,000 or not?

A. No, sir.

198 Q. And the house 2232 N street, that you offered to put in this trade at $12,000, you cannot tell us whether that cost you $7,500 or not?

A. I think it did.

By Mr. KEANE:

Q. Property is more valuable when it is built upon than when it is vacant?

A. Yes, sir.

By Mr. DARLINGTON:

Q. Does it not depend a good deal upon the character of the building?

A. Yes, sir; but I allude to my own, because I know I build nice houses.

DANIEL H. KENT.

Adjourned to Wednesday, February 23, 1898, at 3 o'clock p. m.

ROB'T L. MILLER.

FEBRUARY 23, 1898.

BERNARD P. MIMACK, a witness produced on behalf of the complainant, being first duly sworn, was examined and testified as follows:

By Mr. KEANE:

Q. Where do you reside?

A. No. 1769 Q street.

Q. In Washington?

A. Yes, sir.

Q. How long have you resided in Washington?

A. Twenty-six years; the last residence covered 26 years.

Q. Have you bought and sold real estate in the District of Columbia?

A. Yes; at intervals.

Q. During how long a time have you been in the habit of buying and selling real estate in Washington?

A. Perhaps 18 years.

Q. Have you acted as an appraiser?

A. Recently, within the last three years, I have been an attorney and attending to real-estate matters for three years.

Q. And you say you have bought and sold real estate here for how long?

A. Oh, about 18 years on my own account. That is, understand, not as a broker.

Q. And for the last three or four years you have bought real estate as a broker?

A. Not as a broker, but as an attorney.

Q. And you have loaned money, also, on real estate?
A. Yes.
Q. Have you loaned very much in the past 18 years on real estate?
A. For the past three years I have loaned a good deal of money; I cannot say how much.
Q. Before loaning money did you appraise the property yourself?
A. Yes, sir.
Q. Are you familiar with the values of real estate in Washington?
A. Yes, sir.
Q. Are you familiar with the property at the northwest corner of N. H. avenue and Q street, being lots 1, 2, 3, and 66, in
199 square 134?
A. I do not know them by the numbers, but I know the corner you refer to.
Q. How long have you been familiar with that piece of property?
A. About twelve years.
Q. What would you say was the value of that property in your opinion in April, 1896; how much a square foot was it worth?
A. About $8.
Q. Will you kindly state the grounds or facts or the circumstances on which you base that opinion as to the value of those lots?
A. Well, its frontage, compared with the number of feet, and the whole parcel, and its aspect looking south and east; I consider that advantageous, and the fact that it is on a wide opening. There is quite a plaza in front of it. The property surrounding it all secured, all built upon by fine residences.
Q. How many streets join there at that corner?

Mr. DARLINGTON: Objected to as not being the subject of expert inquiry.

A. Two streets and an avenue intersect at that point.
Q. Will you kindly name them?
A. Q street, 18th street, and N. H. avenue.
Q. How near is that ground to Dupont circle?
A. Well, I never paced it off.
Q. How far is it—about a block?

Mr. DARLINGTON: Objected to as leading.
Mr. KEANE: I call for the part of the question which is objected to as leading to be read to the witness, which counsel for the defendants objects to because the question is leading.
(Question repeated.)

A. I should say about 500 feet; I don't know exactly how far.

Cross-examination.

By Mr. DARLINGTON:

Q. What has been your occupation during the 26 years you have resided in Washington?

A. Twenty-three years I was in the Treasury Department.

Q. In what capacity?

A. Chief of division in the Fourth Auditor's office.

Q. You speak of having yourself bought and sold property during eighteen years. Will you tell us how many purchases you made?

A. I cannot say exactly. I bought and sold on Q street.

Q. How often, and where, and when?

A. On two or three occasions; my own house and further along, on the same street, for Schneider; I cannot give you the date.

Q. Can you give the year?

A. We have lived in my house now eleven years.

Q. Were those other purchases made about the same time?

A. Shortly afterwards; probably nine years ago.

200 Q. How many such other purchases were there?

A. I believe two others on that street.

Q. Which two?

A. I have forgotten the lots, whether I bought them together or separately, but there were four lots.

Q. Do you still own them?

A. No.

Q. Can you tell us to whom you sold them (referring to the four lots)?

A. White and Doolittle, I think, were the names.

Q You are in doubt about that?

A. Yes; I am in doubt upon this point. I am in doubt whether the two lots that passed title went through me or whether they were taken by Mr. Devalin and the title passed through me, two lots out of four.

Q. Do we understand that you are merely a nominal party to either one of the transactions?

A. In the Devalin case I was. I bought them and afterwards he took them, but I cannot say now whether the title went through me or not; I have forgotten.

Q. What was the price per square foot?

A. You mean the purchasing price?

Q. The price at which you bought and sold.

A. The purchasing price was $1.25, and the sale was made a few months after at $1.60.

Q. How far were these lots from the property in controversy here?

A. Perhaps 500 feet; 600, perhaps; 6 or 7 hundred, I think.

Q. That was about ten or eleven years ago?

A. About eleven years ago.

Q. Has the property increased or decreased in value since 1888 or 1889?

A. It has increased very much in that section.
Q. Ground commands a higher price in that section now than in 1888?
A. Yes, sir; it commands a higher price now than in 1888 in that section.
Q. That is your opinion?
A. In that section; yes, sir.
Q. What is the date of the last purchase or sale you made anywhere in that locality?
A. That was the last purchase I made; the last purchase I made in that neighborhood I have given you, ten or eleven years ago.
Q. So that you have neither bought nor sold property in this locality for ten or eleven years?
A. No, sir.
Q. How near is this property to the property that you purchased within the last ten or a dozen years?
A. No nearer than 14th street, about a mile.
Q. What persons have loaned money upon your appraisements in the last few years?
A. I don't know whether that question should be asked, whether I am required to tell who loans money through me in a matter of this sort.

Mr. KEANE: You are at liberty to say whether you will answer the question or not.
The WITNESS: I do not think you can ask me that question.
Mr. DARLINGTON: I give notice that I shall move to suppress the deposition unless the question is answered.

201 Q. Will you name any person who has loaned money upon your appraisement of property at any time within the last three years?
A. R. T. Jones, of New York.
Q. When?
A. Within the last year.
Q. Any one else?
A. Mr. Halliday, of this city. I have named you two.
Q. Are those the only ones?
A. Oh, no.
Q. Will you name the others?
A. I decline to do so.

Mr. DARLINGTON: Then I move to suppress the deposition of this witness, he having refused to answer a question on cross-examination that he suggested to counsel on the other side.
Mr. KEANE: I asked no such question. I insist that the witness answer the question, but we have no control over him.
Mr. DARLINGTON: The record shows that Mr. Keane tells the witness he can refuse or decline to answer the question.
Mr. KEANE: I think the record does not. I say now I do not pretend to exercise any control over this witness. I never met him before and do not know him, and I exhort him to answer the ques-

tion, so far as I am concerned. I hope he will answer all questions and answer them fully, yet if he declines to answer them on the ground that it is not pertinent, and wishes the court to pass upon that question, I cannot interfere.

Q. These lots you have named——

Mr. KEANE: If the question is proper, the court will compel him to answer.

Q. So that you betray no professional confidence in disclosing the names of these parties?

A. No, sir; they are all matters of public record.

Q. Why, then, do you decline to answer?

A. I cannot charge my memory. You ask me to name the persons. I cannot charge my memory with the persons for whom I have made loans. I have given you two.

Q. Have you given all you can remember?

A. No, sir; I have not given all I can remember. I might remember, but I cannot charge my memory with them all.

Q. Do you remember any others now?

A. I decline to answer. I think it is not at all pertinent to the case.

Mr. DARLINGTON: Then I renew the notice, and I move to suppress the deposition.

Mr. KEANE: I hope the witness will answer the questions fully.

The WITNESS: I cannot answer it to the full extent.

Mr. KEANE: You must not converse with me, but I do hope you will answer the questions fully.

Q. What properties have you bought and sold as broker and attorney in the past three years?

A. I may state the house on Oregon avenue; one or two in the neighborhood of the Government Printing Office.

Q. Any others?

A. None that I think of just now.

202 Q. Was it one or two sold in the neighborhood of the Government Printing Office?

A. Two, certainly.

Q. What did those sell for?

A. One, a small property, I think, $1,800, and I think the other was $2,800.

Q. What did this house on Oregon avenue sell for?

A. $10,000.

Q. When was that sold?

A. About two years since.

Q. What were the dimensions of the lots?

A. On Oregon avenue?

Q. Yes.

A. 21 feet by about 100.

Q. How improved?

A. A house.

Q. What kind of a house?
A. Brick.
Q. How many stories?
A. I cannot tell you; all three stories.
Q. How near is that to N. H. avenue and Q street?
A. A quarter of a mile.
Q. What sales in the neighborhood of N. H. avenue and Q street at $8 a square foot have you any knowledge of?
A. I do not think I have knowledge of any.

B. P. MIMACK.

Sworn to and subscribed to before me this 23rd day of February, 1898.

ROB'T L. MILLER, *Examiner.*

JOHN S. BLANKMAN, a witness produced on behalf of the complainant, having — first duly sworn, was examined, and testified as follows:

By Mr. KEANE:

Q. Where do you reside?
A. 1420 New York avenue.
Q. Washington?
A. Yes, sir.
Q. How long have you resided in Washington?
A. I came here in the latter part of 1865. I spent part of my life in the Rocky mountains and part of it in New York; I suppose altogether about 24 years.
Q. Have you bought and sold real estate in Washington during that time?
A. Yes; for myself and clients about $1,000,000, I suppose, altogether.
Q. In what part of Washington principally have you bought and sold real estate?
A. Everywhere except the southwest part.
Q. How long have you been buying and selling real estate in Washington?
A. Well, mainly since 1875; I may have had some transactions before that, but mainly since 1875.
Q. Are you familiar with the value of real estate in Washington?
A. I was up to about a year or so ago. I don't know what it is worth now anywhere in the city.
Q. How long have you been familiar with the value of real estate?
A. Certainly since 1875.
Q. Do you know the northwest corner of N. H. avenue and Q street?
A. Very well.
Q. Lots 1, 2, 3, and 66, in square 134?
A. Yes, sir.

203 Q. What in your opinion was that property worth a square foot in April, 1896?

A. I appraised it for a client at $7 or $8 a foot, is my impression at that time.

Q. And what is your present opinion as to what it was worth at that time?

A. That I consider a fair valuation between $7.50 and $8 a foot, taking into consideration the value of the buildings around in that vicinity.

Q. Will you kindly state the grounds or facts and circumstances upon which you base your opinion of the value of the property at that time?

A. The general knowledge of values around there, the location and character of the ground and surroundings and improvements.

Q. Please specify what those facts are, the character of the improvements, &c.

A. The buildings are all there on the ground. I cannot enumerate them; they are on the corner and purchases I have made for clients and for myself.

Q. I hand you a chart (handing witness Exhibit E. C. B. No. 1).

A. What is this you hand me? What is the question you want to ask in respect to this plat?

Q. You said that one of the grounds on which you based your opinion of the value of the property was the improvements in that neighborhood, and I show you this chart——

Mr. DARLINGTON: I object to the exhibition of this so-called chart to the witness for the purpose of having him read off the names of the persons who seem to have been put there by Mr. Baumgras, and submit that it is not proper.

Q. Speak from memory, then.

A. There is the Leiter house to begin with. There is the property on the corner known as Clover's house—Lieut. Clover. There is Schneider's row of houses and improvements down on Q street. There is a number of fine houses up above who I do not know the owners of, and there is a number of fine buildings around there, and the fact of the position and topography of the ground in reference to the intersecting streets and the proximity of other buildings, all very first-class buildings, and property I had also purchased for clients and the general knowledge which I possessed about the locality and the improvements contemplated enable me to state just as any other expert would form his opinion.

Cross-examination.

By Mr. DARLINGTON:

Q. What occupations have you followed in the District of Columbia?

A. Lawyer and investor — capital & inventor. I have taken out about thirty patents in this country and Europe.

Q. Investing capital in what way?

A. The way required by my clients—loans, deed of trust loans, and purchase of real property and purchase of securities.

Q. As you have had some experience as a lawyer, please
204 tell us whether the data upon which real-estate experts form their valuation is any more reliable than data from which experts generally testify.

A. I do not comprehend your question. If you get your substantive and the *b*erb connected I may catch your idea.

(Question repeated.)

A. I do not catch the question yet. Do you want me to pass upon a question of law?

Q. If you cannot answer it we will pass it.

A. I cannot comprehend the question. Do you wish me to pass upon the question as to the law of experts?

(Question again repeated.)

A. As I understand the question, an expert in real estate would form his opinion from the information he possessed of the subject-matter, and an expert on any other subject would form his opinion in the same way—that is, if I understand the question.

Q. So that you do not consider expert opinions as to real estate of any more value than expert opinions upon other subjects?

A. Not at all if that is your idea.

Q. As you profess to be an expert in real estate, can you tell us whether the data upon which such experts testify is such that they usually agree as to their valuations?

A. As a rule, real-estate experts are generally very uniform; that is my opinion as to valuations. There is a difference always, but as a class I think they are more apt to agree than any other experts.

Q. If there should be a difference between fifty and seventy per cent. between yourself and another competent and experienced expert in this city in real estate in regard to this particular property, how would you explain that divergence?

A. I would explain it by saying some one of them was incompetent in a difference of fifty per cent. or more.

Q. So it would be only a question as to which is the incompetent expert?

A. That is the question.

Q. When did you reside in the Rocky mountains?

A. I was there about two years the first time. I have been there several times.

Q. My question is when were you there?

A. I think I was there from 1880 to 1882 or 1883.

Q. What was your occupation there?

A. I had a nine-tenths interest in about nine lots on the market.

Q. How did demands for large interests in building lots in the Rocky mountains ever bring you back to Washington?

A. I did well and came back here and made over $100,000 in 9 months for myself and clients.

Q. Out of your Rocky Mountain lots?

A. No, sir; Washington lots.

Q. What is the date of the last sale you made in Washington?

A. I think I got out of everything I had in 1886 or 1887. I think I sold one house since. I made loans chiefly on property. I bought a good deal. You mean for lots, do you; do you mean sold with reference to myself or clients?

205 (Question repeated.)

A. Personally, individually, of my own property, I think was about four years ago. I have done nothing since.

Q. Where was that property?

A. Mr. Warner, where is that street out there? You can give me the number of it.

Mr. DARLINGTON: Never mind. You will have to rely on your own memory.

A. I cannot remember the name. It is between 6th and 7th and L and K northeast.

Q. What was the price?

A. I think it was about in the neighborhood of $1,500.

Q. Prior to that, what was your last real-estate sale in Washington for yourself or others?

A. As to my own sales, I have no objection to speaking about them. Those of my clients I object to speaking about. I decline to answer that question without permission from them.

Q. My inquiry is as to the last sale you made prior to the one of which you have spoken.

A. I cannot tell without looking at my books. I can give you an approximate idea.

Q. Please do so and locate the property.

A. I think the last sale individually I made was the piece of property I purchased from Mr. Warner on the near back of the Patten place. That, I think, I sold for $1.25 to Mr. Glover, either to him or his clients; I do not know which one it was. He paid me the money.

Q. When was that?

A. I think, not to be specific, it was somewhere about 1887; I think somewhere along there.

Q. So that you had two real-estate transactions on your own account within the last ten years?

A. I do not think I have had in the last eight years over two real-estate transactions of my own, except the purchase of a grave-yard lot. I do not suppose you have reference to that.

Q. Sales or purchases you have made for clients are duly indicated on the record books here, are they not?

A. They indicate that my clients bought the property, but would not indicate that I bought the property or negotiated it for them.

Q. As a matter of fact, have you bought any property for clients within the last ten years?

A. Loans and sales, I think, which will amount to certainly over $200,000.

Q. Did you understand my question related to loans?

A. Loans is the same as deeds of trust; conveyance of real estate is the same.

Q. Can you name any person who has loaned money on your

valuation in this District at any time within the last ten or fifteen years?

A. If I can get the permission of some of them who will give their consent for me to testify tomorrow I will do so; if they are willing I am.

Q. Don't you know perfectly well that every loan which is made is a matter of public record and is not a secret to anybody?

A. I know it, but that gives me no right to disclose my clients' transactions. I can apply for permission and let you know.

JOHN S. BLANKMAN.

206 Sworn to and subscribed before me this 23rd day of February, 1898.

ROB'T L. MILLER, *Examiner.*

JAMES E. FITCH, a witness produced on behalf of the complainant, being first duly sworn, was examined, and testified as follows:

By Mr. KEANE:

Q. Where do you reside?

A. In this city.

Q. How long have you resided in Washington?

A. About 34 years.

Q. What is your occupation?

A. Real-estate broker.

Q. Are you engaged in that business alone or in conjunction with others; what is your firm name?

A. The firm name is Fitch, Fox & Brown.

Q. And where is your place of business?

A. 1406 G street.

Q. How long have you been engaged in the business of real estate in Washington?

A. About 33 years.

Q. During that time have you bought and sold property here in Washington?

A. Do you mean bought for myself or for others?

A. As a broker, bought and sold real estate.

A. Certainly.

Q. For how many years have you been engaged in buying and selling real estate?

A. That was our business from the time I started, 33 years ago; that is the business of a broker.

Q. And you have also been engaged in making loans?

A. We have also been engaged in making loans.

Q. And in appraising property in order to make the loan upon it?

A. Certainly.

Q. And you have made frequent appraisals of property as an expert during that time, have you not?

A. As one of the appraisers for the American Security & Trust

Co., I have made them for the last three or four years and am now making them.

Q. And prior to that you have also made appraisals?

A. Certainly, where we made the loans in our office.

Q. Are you familiar with the value of real estate here, and have you been during the past years you have been in business?

A. Yes, sir.

Q. Do you know the northwest corner of N. H. avenue and Q street, lots 1, 2, 3, and 66, in square 134?

A. Very well.

Q. What would you consider that property was worth a square foot in April, 1896?

A. About $6.50 a foot.

Q. What would you consider that property is worth a square foot today?

A. I should now put it a little higher, about $7.

Q. Will you state the grounds or facts and circumstances on which you base the opinion that that property was worth $6.50 a square foot in 1896?

A. I would like to say in connection with my last answer that the difference in my estimate for the two years is based principally on the silver scare.

Q. State whether it is owing to improvements or not.

207 Mr. DARLINGTON: I object to Mr. Keane suggesting the basis for the answer to this witness, as was the case with the preceding witness, Mr. Blankman. I do not think it ought to be done. This witness is a man of intelligence and quite able to answer an ordinary question without suggestions from counsel.

A. My estimate is based upon the sales that were made in that location by our own firm and other firms. Our own firm made a sale of ground in square 159 on R. I. avenue between 17th and Conn. avenue about five years ago at $7 a square foot. The sale was made in connection with Thomas J. Fisher & Co., and comprised about 17,000 square feet, the purchase-money being $120,000 in cash, and the purchaser being the St. Matthew's church. But my estimate is principally made from the sales made by others where the price was generally known to the public.

Q. State whether or not the particular site and locality and character of the surroundings would affect your opinion or enter into your judgment as an element in reaching a determination upon the value of those lots.

Mr. DARLINGTON: Objected to as argumentative and suggestive and leading.

A. Of course, the shape and location of the building site has very much to do with its value. A larger frontage on the street and a smaller frontage in the rear adds to its value, and it being a corner also makes a great difference.

Q. What corner is it?

A. Northwest corner of Q and N. H. avenue.

Q. Did that have any weight with you——

A. In estimating the value, most certainly.

Q. State whether or not the northwest corner is considered more valuable than other corners.

A. The corner is more valuable than any other lot, and the northwest corner is of all corners the most valuable in our city.

Q. State what other facts would have weight with you in forming your opinion.

A. The proximity to handsome residences would enter into the calculation.

Q. Can you state some of the handsome residences on the other corners?

A. Thomas Nelson Page's residence.

Q. I refer now to the immediate vicinity of that corner.

A. Lieutenant Clover's house and Mr. Whittemore's, Mr. Schneider's residence, occupied by the Chinese minister, and Mr. Leiter's, not far off.

Q. Do you know how many streets come to a junction at that point?

A. At which point—where this lot is?

Q. Yes.

A. Only two. The square below several come in at the circle. I do not think there are but two at this corner.

Q. I will ask you to look at this chart which has been admitted in evidence (handing witness E. C. D. No. 1) and state whether that will refresh your recollection.

A. (After examining same.) I see but two streets here.

208 Q. You are quite right. How many streets, including avenues as a street, comprehending under the designation of a street an avenue?

A. There are two streets, 18th and Q, and N. H. avenue.

Q. Would that fact, in your opinion, have any effect in enhancing the value of the property, the junction of three streets?

A. It would not deteriorate the value. I think it is of no particular importance.

Q. How many square feet are contained in that property?

A. As I recollect, there are 6,373 square feet.

Q. What would you say was the total value of that property at that basis in April, 1896?

A. That is easily calculated. Multiply 6,373 by $6.50. I do not see the importance of the question. It is easily figured.

(Mr. Keane hereupon hands the witness a pad and pencil to make the arithmetical calculation, which is objected to, not being a matter of evidence.)

A. (After figuring on paper.) About $41,400.

Q. On the basis of that valuation, I will ask you to state how much of a loan would be made upon that property in April, 1896.

Mr. DARLINGTON: Objected to as hypothetical and immaterial to any issue in this case.

A. About 60 % is the usual rate.
Q. About how much would that be?
A. About $24,600.

Mr. DARLINGTON: Counsel for the defendants objects to this testimony if it is introduced as tending to show that the transaction with Mr. Dutton was a mortgage or loan. This objection is made upon the ground that the defendants on learning the true facts of this case have repeatedly offered to treat the transaction as a loan, and to make conveyance of the property to the complainant on being reimbursed their actual advances, which propositions have thus far been declined, or at least not accepted.

Mr. KEANE: Counsel for complainant desires to say that it is not introduced for any such purpose, but for the purpose of proving that a loan of $25,000 could have been readily obtained at that time upon that property, which counsel for complainant states would clearly establish the fact that $25,000 was a grossly inadequate sum at which to purchase the property. Counsel for complainant desires further to state that the defendants have never categorically offered to return the property on repayment to them of the amount which they allege that they paid, and have never put any such proposition in such form as to make it binding upon them, but so far to the contrary have declined to do so.

Mr. DARLINGTON: I do not know what counsel means by a categorical form of proposition. A proposition has been distinctly made and is now made and can be accepted now. If this is not categorical enough, if Mr. Keane will reduce it to such form as he thinks
209 proper, we will put it in such form, but it must be distinctly understood that this offer — for any indefinite time.

Mr. KEANE: Counsel for complainant desires to say that an offer of this kind made after the suit has been commenced and after it has been in litigation since September, 1896, and after a number of witnesses have been examined upon the part of the complainant, and after the complainant has been obliged to incur heavy *heavy* expenses of retaining counsel, and of incurring the further expenses necessarily incident to the preparation of the trial of the case—such a proposition comes too late, and the complainant declines such a proposition for the reasons stated, and for the further reasons that the defendants were not at the time of the alledged purchase of such property *bona fide* purchasers thereof, but had knowledge of such facts and circumstances as put them upon inquiry and deprived them of the standing in a court of equity of *bona fide* purchasers.

Mr. DARLINGTON: If the above proposition is declined, that, of course, is the end of it, and should estop the parties from ever hereafter asking that this be done. I ought to say, however, that I think Mr. Keane will not deny that this suit was brought without any notice to the defendants in the first instance, and I am sure that his associate, Judge Wilson, will not deny that the above offer was made before any witness was examined in the case or any notice given for taking testimony.

Mr. KEANE: Counsel for complainant will reserve until the conclusion of the testimony the privilege of summing up the case, and not attempt to do so now; but he does emphatically deny, and he is sure that Judge Wilson will deny, that any such proposition was ever definitely made or communicated to the complainant.

Cross-examination.

By Mr. DARLINGTON:

Q. You state that you are one of the appraisers for the American Security and Trust Company?

A. Yes, sir.

Q. Are the appraisements for that company made upon the basis you have here stated, namely, about 60% of the value of the property?

A. That is the loan we make, 60 per cent. of its value.

Q. Are these values found to be reasonable certain, and accurate?

A. Reasonably so.

Q. Has it not repeatedly happened that the property has been bought in under foreclosure proceedings for less than the amount of the debt, the whole 40 per cent. being absorbed in the uncertainties which attend these transactions?

A. No, sir; I would not say frequently. I would say now and then.

Q. Do you know what is known as the mill property on Ohio avenue, or that locality?

A. Yes, sir.

Q. Was not that bought in for the American Security Company for an amount less than the debt?

A. It was.

Q. Are you not also aware of the fact that the company has
210 offered to convey that property for the amount of the loan less interest and expenses?

A. I am not aware of it, but I should not be at all surprised at it. In loans of that kind, as a rule, we are willing to take the principal and interest.

Q. Do you know the property corner of 18th and F, known as the Webb or Randall property?

A. Yes, sir.

Q. Did you make an estimate on that property some time ago?

A. Yes, sir.

Q. Do you know what the amount was?

A. I cannot tell you now.

Q. Was it $49,000?

A. I cannot tell you without reference to the books. I would be glad to refer to the books if you so desire.

Q. Are you aware that the property was offered for sale and no bid of 60% of the amount of valuation was received?

A. I do not know about that.

Q. Did you value what is known as the Dr. Neal property, on H

street near Pennsylvania avenue, in 1896, near the residence of Justice Hagner?

A. I think we did. I don't recollect the property exactly, but I think very likely we did.

Q. Was not that bought in for less than the amount of the loan?

A. I cannot tell you. I do not keep track of what is done afterwards, as a rule.

Q. The fact is that these valuations are liable to be very much out of the way sometimes.

A. Now and then it occurs, but not often.

Q. Is it not further a fact that these erroneous valuations have been much more frequent of late years than formerly?

A. I cannot say that. I have been an appraiser for the trust company since the time of its organization, five years.

Q. Suppose it to be a fact that the property in controversy has been in the hands of a large number of real-estate agents, both before and after the panic of 1893, at about the valuation you now place upon it, and that none of them has ever been able to receive any offer for it from any quarter even approximating that price, would that affect your estimate of its value at all?

Mr. KEANE: Objected to upon the ground that it is a hypothetical question, and that the facts assumed by the question are not true, and that there is no proof of the same.

A. I would say this is peculiar property, and the owner has to wait a long time sometimes to get an offer for it, and only a wealthy man wishing a site for a fine residence would think of taking such a site. I would further say that in 1895 the property was put on our books at $8.65. We thought the price too high. Soon after we had two letters from a party in New York, asking the value of the property in our estimation. We answered that $6 we considered a fair valuation, a fair price.

Q. Do you recall the name of that party from New York?

A. Mr. Pettit.

211 Q. Did you ever receive an offer from him at $6?

A. No, sir.

Q. Did you ever receive an offer at any price?

A. We did not.

Q. How long was it in your hands?

A. In 1895. I think it was placed in our hands with other brokers.

Q. How long did it remain in your hands?

A. I cannot say. We sometimes receive no notice that properties are withdrawn, but after a year or so we hardly consider the property in our hands.

Q. Do you know who this Mr. Pettit was, who wrote you?

A. I do not.

Q. As I understand, he did not make a proposition for the property at any price?

A. No, sir. He simply asked our opinion of the value of the property.

Q. Suppose that property in 1896 belonged to a man who was compelled to raise money and to effect a speedy sale of it, what price do you think it would have brought under those conditions?

A. That is very hard to say. It would depend largely upon some firm developing a wealthy buyer.

Q. The valuation you have put upon it, as I understand, is based upon the ability of the owner to hold it, perhaps, for a long time and until it can be sold to advantage?

A. The estimates are made in the ordinary way. When you ask what property is worth we give it, taking into account all these surroundings.

Q. Do you think you could realize $6.50 for it in April, 1896, if compelled to find a purchaser at once; in other words, to make a quick sale of it?

A. I cannot answer that. It depends upon the party having charge developing a customer and willing to pay such a price for a site.

Q. It depended upon whether your customer wanted it sufficiently to pay the full price for it?

A. Yes, sir; exactly.

Q. Suppose you had to sell it to some one who was to buy it because it was an investment, a bargain, do you think you could realize that price in 1896?

A. No, sir. I would not have considered it a bargain at that price. In estimating property we do not quite take that into consideration; we do not put it at a price that it would be a great bargain to some one.

Q. You put it at a price you think you could secure for it for the owner?

A. Yes, sir.

Q. Under favorable conditions?

A. Under favorable conditions. We are not speaking of a sale under the hammer by auction at all.

Q. And you are not speaking of necessities which require immediate conversion into money?

A. No, sir.

Q. Can you tell us what this property would have brought at a forced sale in 1896?

A. I cannot.

Q. Do you know of any property of as large an area as this which brought as much as $8 a square foot for residence purposes in 1896 or any time thereabouts?

A. From personal experience do you mean?

Q. Anything that you personally know.

A. Not except by hearsay. If you mean sales made by our
212 firm—do you wish me to answer the question as to what I believe to be a truthful statement by some other agent?

Q. Unfortunately that would not be evidence.

A. I actually know of none. The sale I have already spoken of was made by ourselves and with Thomas J. Fisher & Co. That is the only case I think of.

Q. You refer to the Saint Matthew's sale?
A. Yes, sir.
Q. Was not that made six years ago, in 1892?
A. I should have said five years ago. I am dating it from the time we entered into our new office. I think that was five years ago last December. It was after we moved in. I may be wrong; it may have been six years ago.
Q. Is it not a fact that that sale took place before the financial flurry or depression in 1896?
A. Yes, sir.
Q. And did not that flurry affect materially the market?
A. Yes, sir.
Q. Is it not a fact that the obtainable price for real estate has pretty steadily declined ever since?
A. I would rather say there has been no demand rather than to say the prices have lowered very much.
Q. The property has to be sold at prices lower?
A. Yes, sir; certainly.
Q. Was not this St. Matthew's property improved by a structure which went into the price?
A. That had to be demolished. They paid a very big price because they wanted that particular property; that entered into the price. They paid $7 a square foot for land that was not on a corner.
Q. And improvements have to be paid for?
A. Yes, sir.
Q. You have spoken of your experience as a real-estate representative of persons buying and selling. Have you not purchased on your own account?
A. Yes, sir; somewhat.
Q. Your firm has done that business to some extent?
A. To a very small extent.
Q. In whose name in such cases is the title usually taken—in the name of the members of the firm or, for convenience, the name of some employee?
A. Sometimes one and sometimes the other. If for our own use, for instance, to build on, it is taken in our own name, but where there are three or four combined it is taken in one person's name as trustee for all.
Q. That is not an unusual thing in Washington transactions?
A. Not at all.
Q. Have you known of a single sale since 1896 of one piece of residence property containing in the neighborhood of 6,400 square feet at a price approximating anything like $40,000?
A. Not to my knowledge.

JAMES E. FITCH.

Subscribed and sworn to before me this 23rd day of February, 1898.

ROBT L. MILLER, *Examiner.*

213 JOHN JOY EDSON, a witness produced on behalf of the complainant, being first duly sworn, was examined and testified as follows:

By Mr. KEANE:

Q. Where do you reside?
A. Washington, D. C.
Q. How long have you resided here?
A. About 34 years.
Q. Do you know Mrs. Ellen Spencer Mussey?
A. I do.
Q. State whether or not Mrs. Mussey ever made an application to you for a loan on the property at the northwest corner of N. H. avenue and Q street.

Mr. DARLINGTON: Objected to as irrelevant, immaterial, and incompetent as against the defendants in this case, unless the application is shown to have been made in their presence, or that they had some connection with or knowledge of it.

A. She did.
Q. Will you state what she said to you and what you said to her?

Mr. DARLINGTON: Objected to, and notice given that any answer to it will be moved to be excluded, unless it is claimed that the defendants in this case, or some of them, were present at the interview. I think it must be known to counsel that Mrs. Mussey's statements to the witness in the absence of the parties to this suit are not evidence.

A. She said she wanted to get a loan of $25,000, and pointed out this property on the plat book, and I told her I thought she could; it was a very fine piece of property, the location of which I knew very well. I told her it would be subject to official valuation, and that I thought the property was worth $40,000.

Mr. DARLINGTON: Let it be understood that all of this goes under my objection without incumbering the record by repeating it.

The WITNESS: It is one of the finest located pieces of property in Washington. Then she said, "Would you give $25,000 for it?" I said I certainly thought that would be a very low price. Well, she said, I may want to sell it to you for that amount, and that she would return. She did not return. I told her I would be glad to see her, and she left my office. That is the last I saw of her since in regard to this property.
Q. Do you know where she went when she left your office?
A. I cannot state; I cannot say positively where she went; I can only infer that she went to Mr. Warner, or in Mr. Warner's office, because Mr. Wine informed me afterwards——

Mr. DARLINGTON: I object.
Mr. KEANE: Go right ahead. Do not interrupt the witness. I object to the witness being interrupted in the middle of a sentence

for the purpose, apparently, of preventing him from stating what he is about to state.

Mr. DARLINGTON: Under the rules of our courts and of all courts of which I have any acquaintance, it is required that objec-
214 tion be made before the answer is given. Therefore I object to the inference as not being testimony.

The WITNESS: Mr. Wine informed me afterwards that he had bought the property.

Mr. DARLINGTON: Objected to as hearsay.

Q. Can you state when this was?

A. I have no idea of the date at all; I cannot say; it has passed out of my mind, and I took no further interest in the matter.

Q. About how long ago, to the best of your recollection, was it?

A. I suppose about a year and a half or two years ago.

Q. Do you recollect what season of the year it was?

A. I never thought about it; I think it was in the summer time; I have not thought about this at all much.

Q. Have you any way of refreshing your recollection upon that point?

A. It was shortly, perhaps a week or two weeks, before the sale was made—that is, the transfer; it was shortly before the transfer was made.

Q. To Mr. Richardson?

A. To the party; I don't know to whom it was sold; I supposed it was sold to Messrs. Wine and Warner.

Q. With what company are you connected?

A. The Washington Loan & Trust Co.

Q. Are you an officer of that company; if so, what?

A. Yes, sir; I am president of that company.

Q. You are the president of the Washington Loan & Trust Company?

A. Yes, sir.

Q. Was this application made to you by Mrs. Mussey, as president of the Washington Loan & Trust Co., to secure a loan from the company or from you personally?

A. Officially.

Q. And was your company willing to make the loan or not?

A. I gave no further consideration to the matter. The interview was brief, and all that occurred is just about what I have stated; it has passed out of my mind entirely.

Q. Now, the property to which you refer is the northwest corner of N. H. avenue and Q streets?

A. Yes, sir.

Q. Did you look at the property on the map at the time of this interview?

A. On the plat book.

Q. Did she mention at the time for whom the loan was desired?

A. No; she did not.

Q. Did she state whether or not the property was in her hands, with authority to obtain a loan?

Mr. DARLINGTON: I object to the leading form of this question particularly in view of the fact that the witness has already testified that Mrs. Mussey had told him that she would probably sell it to him for $25,000.

A. That is what I understood.

Q. And you told her you would make the loan?

A. I told her I thought it would be sufficient security for that, but that it would have to be examined into officially and reported upon.

215 Cross-examination.

By Mr. DARLINGTON:

Q. What do you refer to as an official examination?

A. The valuation committee making an examination and report.

Q. That is, the valuation committee of your Washington Loan & Trust Co.?

A. Yes, sir.

Q. Who composed that committee at that time?

A. John A. Hamilton, Mr. Wine, Albert F. Fox; they were the active men.

Q. If I understand you, it is upon the valuation of these gentlemen, and not that of the president, that loans are effected?

A. That is right.

Q. Suppose that committee had examined the property and valued it at $1 a foot; would you have loaned $25,000 on it?

A. No.

Q. You say Mr. Wine told you that they had bought it and that this statement was made by him shortly after Mrs. Mussey came to see you?

A. Yes, sir.

Q. He made no secret about it?

A. No, sir.

Q. Did he tell you who they were who had bought it?

A. Yes; he told me he and Mr. Warner had bought it.

Q. What margin does your company require in this matter of making loans?

—. 40 %; we loan 60 %.

Q. Do you remember having a talk with Mr. Warner about this sale at or about the same time you had a talk with Mr. Wine?

A. I don't think I did.

Q. Let me see if I can refresh your recollection about it. Do you remember a conversation with Mr. Warner in your office at about the time of the transaction and about the time of the Wine conversation, at which you told him that you told Mrs. Mussey it would take a little time to make the loan, and she said the money was needed at once?

A. Possibly I did. I do not remember it, but I think it very likely.

Q. Mrs. Mussey did make that statement to you, did she not?

A. How is that—that she wanted it immediately?

Q. Yes.

A. I think not; because when she went out of the office she said, "I will come back," but she did not.

Q. Did you not tell her it would take some little time to make the loan?

A. Yes, sir.

Q. And did she not tell you that the owner wanted immediate action?

A. I think likely she did.

Q. Did you not tell Mr. Warner that at your office a few days afterwards in speaking of this matter?

A. I might have done so. If he had called and spoken to me on that matter I should probably have said that to him, and probably I did.

Q. Was it not after you had told her it would take some time to make the loan that she asked you if you would not yourself buy it?

A. It was in the same conversation—the first and only conversation I ever had with her.

Q. Don't you remember it was after you told her it would
216 take some time to make the loan that she told you her client wanted money at once and must have it?

A. Yes, sir; that is the last remark she made.

Q. Don't you remember telling Mr. Warner this conversation shortly afterwards?

A. That is very likely.

Mr. KEANE: The witness is called upon to state his knowledge of, not what he thinks likely or might have been or may have been, but he actually has knowledge of, and he is cautioned to confine his answers to his own knowledge.

Mr. DARLINGTON: Does Mr. Keane strike out the answers of the witness to his questions some time ago in response to my identical objections, or does he let them stand?

Mr. KEANE: Counsel for complainant declines to enter into argument with counsel for the defendants.

The WITNESS: Can I add a word?

Mr. DARLINGTON: Certainly.

Mr. Warner, as you know, is a member of the executive committee of our company, and he probably consulted me at that time.

(Counsel for complainant states to the witness that it is not evidence as to what probably was or was not, but that the witness must confine himself on the witness stand to what he has actual knowledge of, and if he has no knowledge of the question to say he has no such knowledge of it.)

Q. How long have Messrs. Fox, Hamilton and Wine been active appraisers for the Washington Loan & Trust Co.?

A. Some years; four or five or six years.

Q. Almost since its organization?

A. Until very recently. Mr. Fox does not now serve on the committee.

Q. He resigned to take the presidency of the Columbia national bank?

A. Yes, sir.

By Mr. KEANE:

Q. Are you familiar with the value of real estate in Washington?

Mr. DARLINGTON: I object to the question as not responsive to the cross-examination, and will move to exclude any testimony taken now upon any subject which is not so responsive.

Q. Are you familiar with the values of real estate in Washington?

A. Fairly. I have been loaning money a great many years on property here.

Q. And as president of the Washington Loan & Trust Co., is it necessary that you should have such knowledge of the value of real estate in Washington as part of your equipment for such office?

Mr. DARLINGTON: Objected to as calling for conclusions and not evidence of any fact.

A. I should say the president of such a company should be pretty well posted upon the true value of real estate.

JNO. JOY EDSON.

217 Sworn to and subscribed before me this 23rd day of February, 1899.

ROB'T L. MILLER, *Examiner.*

RICHARD W. TYLER, a witness produced on behalf of the complainant, being first duly sworn, was examined, and testified as follows:

By Mr. KEANE:

Q. Where do you reside?

A. At 1753 N street, Washington, D. C.

Q. About how long have you resided in Washington?

A. About thirty years.

Q. What is your business?

A. Real estate, mortgage, loans, and insurance.

Q. What is the title of your firm?

A. Tyler & Rutherford.

Q. What is your place of business?

A. 1307 F street.

Q. About how long have you been engaged in the real-estate business in Washington?

A. About twenty-five years.

Q. During that time you have bought and sold a great deal of real estate for your clients in Washington and you are familiar with the value of real estate here in Washington?

A. I cannot say we have done a very extensive business in real estate. We have been in that line of business and have negotiated sales, bought and sold, more or less.

Q. And you are familiar with the value of real estate here in Washington?

—. Yes, sir; somewhat.

Q. What would you say was the value of the property situate in Washington on the northwest corner of N. H. avenue and Q street, known as lots 1, 2, 3, and 66, square 134, per square foot in the month of April, 1896; what would you say as to its fair value per square foot at that time, a frontage of 112 feet; what would you think that property was fairly worth a square foot in April, 1896?

A. I should say from six to eight dollars.

Q. And upon that valuation what loan would be made upon the property at that time; about how much of a loan would you think?

Mr. DARLINGTON: Objected to as irrelevant to any issue in the cause and immaterial.

Q. Please answer the question.

A. That is a question that would depend very much upon the condition of the money market at the time.

Q. What is the percentage usually of loaning money in regard to the valuation of property—fifty or sixty per cent.?

A. That is our rule. I think some of the local institutions loan up to seventy-five per cent.

Q. So that you think a loan that would have been obtainable ordinarily upon that property at that time would have been fifty or sixty per cent. of its valuation?

A. I should think so.

218 Cross-examination.

By Mr. DARLINGTON:

Q. The amount of a loan depends somewhat, you say, upon the condition of the money market at that time?

A. At any time.

Q. What was the money condition in April, 1896, if you recall?

A. I cannot give a satisfactory answer to that question without going back to my books and looking them over to see how our loans were running at the time.

Q. You recall, do you not, that that date was on the eve of the Presidential contest upon the question of gold and free silver?

A. April, 1896?

Q. Yes.

A. Yes; I do not recall it particularly, but the election took place in the fall of 1896; the Presidential election.

Q. Recalling that circumstance, do you remember what the condition of the real-estate market and the market for loans was pending the settlement of that question?

A. I cannot say without taking the business of my office as a

guage or guide and examining the court records to see how business was going.

Q. Do you or do you not recall that capitalists were a little chary of investments then until it was determined whether we were to have free silver or not?

A. No, sir; I think my experience is that investors asked for a gold clause in the contract, but my recollection is there was plenty of money for mortgages all the time.

Q. Do you or not recall whether the agitation of that question at that time affected real-estate values very much in Washington?

A. Real estate has been inactive and had been for some time; has been ever since and is now; but I never believed that the real value of real estate, the permanent value, was so much affected by the spasmotic changes of conditions.

Q. Did you not consider that a radical change in our monetary system would affect values a good deal?

A. It might have a depressing effect or otherwise, it seems to me.

Q. You do not remember what the effect was in April, 1896?

A. I cannot say.

Q. Or whether it had any?

A. I cannot say. My recollection — that there was plenty of money for mortgage loans at that time.

Q. And you do not recollect that that financial question affected the values of investments at that time?

A. The market was inactive. I think perhaps at that time, pending the election, perhaps it might have had a depressing effect upon the real-estate market just at that time, but people were looking forward to a very active market after the election, so that I could not *day* whether it could have lowered prices or not.

Q. You have mentioned six or eight dollars a foot as your estimate of the value of this property. At what date do you fix that value?

A. 1896, the time you speak of.

Q. What do you think it is worth now?

A. I think it is worth pretty nearly as much now.

219 Q. How was it in April, 1895?

A. The value of that property has been, in my opinion, pretty well settled for the last five or six years.

Q. What do you think it was worth in April, 1895?

A. I would not like to give an opinion, because I do not carry the dates and associate prices with times. I cannot do that very well without looking over the transactions that took place.

Q. Is it easier to give the supposed value in 1896 that it would be in 1895?

A. I have given it a little thought for the reason that I was asked to testify in this case, which I do very reluctantly.

Q. Do you know of any facts or circumstances to change the value between April, 1895, and 1896?

A. I cannot say; I cannot answer that question.

Q. What do you think it was worth in April, 1894?

A. I have already stated that I could not express an opinion as

to those particular dates without going back and examining records and transactions. I think this property has had a very strong value ever since 1890.

Q. What do you think it was worth in 1890?

A. I could not say. I say I think as far back as that it has had a very strong value, and this lot I would consider an exceptionally fine lot.

Q. You do not understand me to ask you about that?

A. With reference to that I understand you are examining me—that is, with reference to the lot or lots here in question.

Q. What do you think that property was worth in April, 1892?

A. What property?

Q. The property about which we are now talking.

A. I say I would not undertake to put a figure on it now, but I think in 1892 it had a very strong value, and the value has continued and perhaps enhanced since that time.

Q. Do you think it was worth more or less than six to eight dollars a foot in 1892?

A. I would not like to undertake to answer that question without examining the records of sales of that time.

Q. Record of what sales?

A. Real estate in that section of the city.

Q. Do I understand you are unable to tell us whether this property was worth more or less in 1892 than it was in April, 1896?

A. Yes. I have said yes without examining the record of sales at that time.

Q. By yes you mean you are unable to say?

A. I am unable to state.

Q. You have no familiarity with general conditions between those two dates which would determine this question without some express examination such as you speak of?

A. Not in my mind at present.

By Mr. KEANE:

Q. Will you kindly state the facts and circumstances in your mind that give this property the value that you have stated? Would the surroundings enter into your judgment in reaching that conclusion? State all you can think of that governs your mind.

220 Mr. DARLINGTON: Question objected to as not responsive to the cross-examination, but a part of the direct examination, if this information is desired at all.

A. I understand that there was a sale made of property, square 137, I think.

Mr. DARLINGTON: I object to what Captain Tyler understands. I think he knows as well as I do that he cannot testify to hearsay.

Mr. WILSON: Just state its location, surroundings, and that sort of thing, so far as it is known to you.

A. It is the triangular piece of ground east of Dupont circle. I think it is north of square No. 137.

Mr. DARLINGTON: I object to any testimony from Mr. Tyler in regard to other sales derived from what he calls his understanding or hearsay. Anything that he has personal knowledge of we would be glad to have.

The WITNESS: Assuming that my information was correct, and I am reasonably certain that it is, that it sold for eight dollars a foot, that would be a *guage* in my mind.

Mr. DARLINGTON: I object to the answer and will ask the court to exclude it at the hearing of the cause.

The WITNESS: I think this lot is about as valuable as that piece of land.

By Mr. DARLINGTON:

Q. You have been informed by somebody that another piece of property sold for eight dollars a foot?

A. I knew at the time as a general thing, as real-estate men do, but I have not gone to the records to refresh myself so as to give positive evidence concerning that sale.

Q. What sale was that?

A. It was a sale of the property commonly known as the Holy Cross Church property, I think. Further, in support of my opinion in regard to that value, I would say that the lot is exceptionally well located—eligibly located—and it has an exceptional value to my mind on that account. I state that in justification of my answer to the question as to the value of the property.

Q. Suppose it to be a fact that this identical property has been in the hands of half a dozen or more real-estate agents for the past four or five or six years at the valuation you have put upon it, and nobody has ever offered any approximation of that price for it, would that affect your estimates of value at all?

Mr. KEANE: Objected to upon the ground that there is no basis in the evidence of facts in support of the hypothetical question.

(Question repeated.)

A. No, sir.

Q. You think the value of the property is not what — can be brought for, *it* but what it ought to bring?

221 A. I think that lot could be held at ten dollars a foot, and might remain for some considerable time, and eventually some one might come along who wanted that particular lot and location and might pay the price for it, and it is upon the theory of a special demand for that particular kind of a lot in that location that I base my estimate to some extent of the value.

Q. And your estimate, then, is not based upon the price that you think could be actually realized for it?

A. At auction; no, sir.

Q. I have not said anything about auction. You did not understand me to say anything about auction.

A. "Realized." You put your question "realized." If you mean within a given time—a short time—I should say that it was

a matter of uncertainty as to what it would bring within a given time.

Q. But you have told us, have you not, that its being in the hands of half a dozen real-estate agents for half a dozen years at this price, without their ability to affect a sale, would not influence your judgment at all as to its value?

A. It might not. Such properties do not change hands frequently.

RICHARD W. TYLER.

Sworn to and subscribed before me this 14th day of March, 1898.

ROB'T L. MILLER, *Examiner.*

WILLIAM H. SAUNDERS, a witness produced on behalf of the complainant, being first duly sworn, was examined, and testified as follows:

By Mr. KEANE:

Q. Where do you reside?

A. Washington, D. C.

Q. How long have you resided in Washington?

A. I have been living here ten years.

Q. What is your occupation?

A. Real-estate agent.

Q. And how long have you been engaged in that business?

A. Ten years.

Q. During that time have you bought and sold real estate in Washington?

A. Yes, sir.

Q. And are you familiar with the values of real estate in Washington?

A. I am to some extent.

Q. Are you familiar with the property on the northwest corner of N. H. avenue and Q street, being lots 1, 2, 3, and 66, in square No. 134?

A. I am.

Q. From your knowledge of the value of real estate in Washington what would you say was the value of that property per square foot in April, 1896?

A. I would say about seven dollars a square foot.

Q. What is the percentage upon the value of property that it is customary in Washington to make loans?

A. That depends a great deal upon the location of the property and its probable future.

Q. Supposing there are about 6,373 square feet of land in
222 this property, about how much would be loaned upon that property at that time according to the percentage of valuation customary here?

A. Do you want me to complete the question you just asked me as to the percentage that might be loaned on that property on a certain valuation?

Q. Yes; that is my question.

A. I should suppose probably sixty per cent. of the valuation could be loaned on that.

Cross-examination.

By Mr. DARLINGTON:

Q. Does the question whether the property is improved or unimproved affect at all this margin for loans?

A. It does usually.

Q. Is there a rule on that subject generally observed by real-estate men?

A. There is no absolute rule. It depends very much upon the quality of the property.

Q. Is there not a general rule that loans upon improved property should be two-thirds of the value and unimproved half?

A. I think not.

Q. What do you think this property was worth in April, 1895?

A. I think the property at that time was worth seven dollars a foot.

Q. In 1894 what would you say — to its value?

A. I do not know there was any material rise from that time up to April, 1895.

Q. In 1892 what would you say it was worth?

A. There was a rise in value in the interim between 1892 and 1894.

Q. Up to what date?

A. I cannot draw any particular line of demarkation there.

Q. You think it was worth a little less in 1892 than in 1894?

A. Perhaps a little less. There have been improvements made there since that had not been made at that time in the neighborhood.

Q. When was your attention first attracted to this piece of property?

A. As nearly as I can remember, it was attracted by Mrs. Godfrey in 1894; possibly a little earlier than that; maybe half a year before that; I am not sure about that.

Q. Do you recall for what purpose it was brought to your attention at that time?

A. For sale.

Q. About 1894?

A. About that time; yes, sir.

Q. Were you able to sell it for her?

A. No, sir.

Q. Can you tell us why?

A. I was not able to find a customer at the price.

Q. Do you recollect the price?

A. When she first came in she quoted it at $55,000, according to my recollection.

Q. And how was it later?

A. I do not think she ever reduced the price, except she asked me to secure an offer, if possible.

Q. What was the largest offer you ever got for it?

A. I never received an offer for it.

Q. When you say you think the property was worth seven dollars a foot, you do not think it could be sold for that, do you?

A. That is a question that I cannot answer positively, be-
223 cause there are always opportunities to make a sale of such property, and at the same time it is difficult to find a customer of that character.

Q. It is property which an owner might have to hold for years without realizing the price you have named?

A. That might be the case.

Q. With consequent loss of interest and liabilities for taxes?

A. They will have to suffer the costs of carrying it.

Q. How long were you trying to sell this property?

A. Until I learned that the property was disposed of—probably two years after that.

Q. It was in your hands up to that time?

A. It was never withdrawn from me.

Q. During all that period you were not able to get any payment approximating the offer you have named?

A. I was not able to get an offer during that time.

Q. If you could not sell it for this price in two years, what makes you think it was worth that price?

A. I draw my conclusions from the fact that other property in the neighborhood was reputed to have been sold at approximate prices or proportionate prices, and also from the improvements in the neighborhood.

Q. But you are aware, are you not, that special conditions sometimes lead to the sale of a particular piece of property?

A. Yes, sir.

Q. And under general conditions you were unable to sell this property within two years?

A. Yes, sir; that is a fact.

By Mr. KEANE:

Q. State what facts and circumstances entered into your judgment in fixing this value upon the property—whether the character of the improvements in the neighborhood, &c., had any weight with you.

Mr. DARLINGTON: I make the same objection which I made to a similar question asked the preceding witness, and invite the attention of the court to this manner of re-examining the witness, which is manifestly a part of the case-in-chief, and which seems purposely to be withheld until after cross-examination, and move that it be excluded on that ground. I further object to the leading character of the question.

Q. State fully.

A. The improvements in the immediate neighborhood, the par-

ticular quality of this real estate, scarcity of lots of that character, in part, led me to place that estimate upon it.

By Mr. DARLINGTON:

Q. All these conditions existed through the two years you had the property for sale, did they not?

A. That is the case; yes, sir.

By Mr. KEANE: Did you make any special efforts to sell the property by advertising or otherwise?

A. I cannot say that I made any what might be considered special efforts.

224–232 By Mr. DARLINGTON:

Q. You were asked whether you advertised or not.

Mr. KEANE: He understands my question.

A. I may have, but I do not now recollect having done so.

By Mr. KEANE:

Q. And the real-estate market generally during that time, was it active or dull?

A. For that character of property it was not very active.

By Mr. DARLINGTON:

Q. Does or does not the activity of the demand affect the price of real estate?

A. Yes, sir; it does.

Q. So that property which has little or no demand has to suffer in price correspondingly in order to sell it?

A. It does when it is put upon the market, most assuredly.

Q. When you want to sell it you have to deduct on that account?

A. If you are obliged to sell it.

Q. If you need to sell it?

A. Yes, sir.

By Mr. KEANE:

Q. What would you say about the character of this property in regard to the question of fluctuations. Would property of this character be calculated to fluctuate as much as ordinary property of which there was plenty of the same kind?

Mr. DARLINGTON: Objected to as not responsive, and leading, and as part of the testimony-in-chief, if material at all, and I move to exclude it from the answer.

A. I think not.

W. H. SAUNDERS.

Sworn to and subscribed before me this 14th day of February, 1898.

ROB'T L. MILLER, *Ex'r.*

* * * * * * *

233 WASHINGTON, D. C., SATURDAY, *April 9th*, 1898.

* * * * * * * *

Whereupon LILY ALYS GODFREY, a witness of lawful age, called by and on behalf of the complainant, being first duly affirmed, is examined:

Mr. DARLINGTON: In obedience to the subpœna of Louis D. Wine, I produce a copy of the letter of B. H. Warner & Company to Mrs. Mary A. Godfrey, dated April 17, 1896, and her reply thereto, dated April 18, 1896, and a copy of the letter from Louis D. Wine and Mrs. Ellen S. Mussey, dated November 30, 1897. These are all the letters which, in the limited time since the service of the subpœna, we have been able to find. We do not find the letters from
234 Mrs. Mussey to which Mr. Wine replies, the latter being referred to in the reply as bearing date November 16th. We have thus far been able to find no letters from Stephen A. Dutton, Allen A. Dutton, or J. F. Lacey. The subpœna addressed to Mr. Warner was only served on him this morning. It is believed that among Mr. Warner's papers will be found some letters from Mr. Foulke and perhaps some of the other letters named in the subpœna. As stated to counsel yesterday, Mr. Wine had already purchased his railroad tickets and was about to leave the city with his wife, and, pursuance to arrangements over telephone by counsel, search has been made by one of his clerks.

If any further papers or letters can be discovered, when he returns they will be promptly produced. I offer all these letters called for to be filed, if desired, by the counsel for the other side, and have already submitted them to him for his inspection.

Mr. KEANE: It is not necessary that they should be filed unless I call for them.

Mr. DARLINGTON: I understand that they have been called for by the subpœna and here give notice that I will produce no more letters without the direction of the court, if they are simply produced for the inspection of counsel and not to go into the case.

Direct examination.

By Mr. KEANE:

Q. Where do you reside?

A. I reside at 287 W. 70 St., N. Y.

Q. What was the date of the death of your grandmother?

A. Mary U. Berry; Dec. 29, 1888.

Q. Of what property did she die possessed?

A. Of lots 2 and 3, in sq. 134, and lot 40, sq. 92, Washington, D. C.

Q. Whom did she leave surviving her as her sole heirs-at-law?

A. My mother, Mary Alice Godfrey, and my two aunts, — Horace Macaulay, now Mrs. Cortlandt Schuyler Van Rensselaer, and Lillie Evelyn Willis, now Mrs. Clarence H. Frost.

Q. What, if anything, did your aunts do in reference to lots 2 and 3, in square 134, and lot 40, in square 92, prior to 1895?

Mr. DARLINGTON: I object to that question, as the disposition of real estate is provable by better evidence than parol statements of the witness, and the latter are inadmissible for that purpose if material.

A. They quitclaimed their right, title, and interest to my mother, Mary Alice Godfrey.

Mr. DARLINGTON: I make the same objection to the answer as to the question.

Q. What, if anything, did your mother do with reference to said lots?

A. My mother gave me those lots in the fall of 1895, and she formerly executed the gift on March 26, 1896, when I re-
235 quested her to execute the deeds to Stephen A. Dutton, with whom I was going to exchange my Washington property for the dock at 137th street, Madison avenue, and the Harlem river, and the coal business.

Q. State whether or not said lots 1, 2, 3, and 66, square 134, were improved.

A. Lots 1 and 66 were improved by a small brick house, 20 x 60, bringing $50 a month rent, and lots 2 and 3 were not improved.

Q. Prior to 1896 were any letters ever received by you or your mother from B. H. Warner & Company or any calls made on you by any one representing them?

A. Yes, sir; several letters were received and several calls from one of the office of B. H. Warner & Company.

Q. Have you any of the letters so received? And, if so, please produce them.

A. Yes, sir; I have two here, and also two cards of one of the office of B. H. Warner & Company—business cards which were left when they called on me—when the man called on me. This letter (referring to the letter of August 7th)—we received another letter similar to this one in relation to the property on the corner of New Hampshire avenue and Q street, asking if the property was still for sale at the same price that was given to B. H. Warner & Company on their books for $55,000.

Q. What answer, if any, was made?

A. An answer was made that the property was still for sale at the same price that it was put on their books—at $55,000. I also remember another letter, which asked if the firm of B. H. Warner & Company could be allowed to put their sign on the property, and that was also answered, saying that we preferred to have our own sign on the property, giving our own address.

Q. Was such sign on the property?

A. Yes, sir; it was.

Mr. KEANE: I offer the letter of August 7th, 1894, in evidence, to be marked Complainant's Exhibit No. 2.

The said letter is as follows:

Refer in reply to F 1865.

Brainard H. Warner. Louis D. Wine.
Geo. W. F. Swartzell. Clarence B. Rheem.

B. H. Warner & Co., Washington, D. C.

AUGUST 7TH, 1894.

Mrs. Godfrey, P. O. box 226, Washington, D. C.

DEAR MADAM: We are now revising our records of property "for sale" with a view to publishing an accurate and reliable bulletin. We have on our books in your name the following property:

1706 Conn. Ave., at $22,000.

Please advise us by enclosed postal card whether or not it is still for sale, and, if so, at what price. If the property has passed out of your possession, will you kindly advise us of the name of the present owner?

236 Unless we shall receive a reply to this letter within ten days from date we will assume that the property is no longer for sale and will strike it from our books.

Very truly yours,
(Signed) B. H. WARNER & CO.

Mr. KEANE: I also offer the letter of March 2, 1895, in evidence, to be marked Complainant's Exhibit No. 3.

The said letter is as follows:

Brainard H. Warner. Louis D. Wine.
Geo. W. F. Swartzell. Clarence B. Rheem.

B. H. Warner & Co., 916 F street, Washington, D. C.

MARCH 2, 1895.

Mrs. Mary Alice Godfrey, No. 287 West 70th St., New York city.

DEAR MRS. GODFREY: Your letter of the 28th ultimo has been received. I have had several parties to look at your dwelling, No. 1706 Conn. Ave., but it was not just what they wanted. I have a friend who will attend the sale and may be induced to purchase should the interior prove satisfactory. In any event I will use my best endeavors to find a purchaser.

I thank your daughter with expressions of gratitude and pleasure for her thought of me. From such a sweet and lovely one 'tis most highly appreciated. I am glad to learn that she has abandoned all intentions (formerly entertained) of going West.

With the most cordial remembrance to you and your daughter, I am, very sincerely,
(Signed) A. K. PHILLIPS.

(In this corner is pasted a cartoon from one of the newspapers of Mr. Bailey.)

I wonder if Miss Lily can guess this photo?

Mr. KEANE: I offer another card of B. H. Warner & Co., to be marked Complainant's Exhibit No. 3, which is as follows:

Alexander K. Phillips, of B. H. Warner & Co., 916 F street N. W., Washington, D. C.

Mr. KEANE: I also offer the business card of B. H. Warner & Company in evidence, to be marked Complainant's Exhibit No. 4. The said card is as follows:

237 Brainard H. Warner. Louis D. Wine.
G. W. F. Swartzell. Clarence B. Rheem.

B. H. Warner & Co., real-estate brokers, Washington, D. C., Warner building, 916 F street N. W.

Endorsed across the face: A. K. Phillips.

On the back of the card is the following:

MRS. GODFREY: I received your message and shall feel quite dis appointed if I do not see you during your stay here. I realize that this is a very unseasonable hour to call, so shall do myself the honor later in the day.

Very sincerely, A. K. PHILLIPS.

Jan'y 16, '95.

By Mr. KEANE:

Q. What efforts, if any, did you make to find the other letters?

A. I made a very careful search, but I was not able to find them. These letters were not saved on purpose; they simply happened to be left by accident. The letters received, after they were once read and answered, they were not kept.

Q. I hand you an instrument in writing and ask you to state whose signatures those are.

A. That is my signature (indicating), and the other one is Mr. Stephen A. Dutton's.

Q. State whether or not you were present when Mr. Dutton signed that instrument, and to whom it was delivered, if you know.

A. I was present, and the contract and bill of sale was made in two duplicate originals; one was delivered to me and one to Stephen A. Dutton.

Mr. KEANE: I offer in evidence, but not filed with the examiner, the paper purporting to be an agreement between Stephen A. Dutton and Lily Alys Godfrey, dated March 26th, 1896, filed as Complainant's Exhibit No. 5, which is as follows:

This agreement made and entered into this 26th day of March, 1896, by and between Stephen A. Dutton of the city, county and State of New York, party of the first part and Lily Alys Godfrey, of the same place, party of the second part, witnesseth as follows:

Whereas the said party of the first part is the owner of certain

personal property consisting of a stock of goods, wares and merchandises, fixtures, machinery, tools, wagons, etc., all of which are at present located in and upon a certain piece or parcel of land known and described as lot No. 21, block 1761, section 6, as shown on the land map of the city of New York, and holds a lease of the said premises together with the buildings erected thereon, upon which said lease there is now an unexpired term of twenty (20) years dating from the 1st day of February, 1896, together with a privilege of a renewal of the term of said lease upon the termination of said present lease for the space of twenty (21) years thereafter and next succeeding thereto, and

238 Whereas, the said party of the second part is the owner of certain land and real estate situated in the city of Washington, District of Columbia, upon which there are certain incumbrances and other valuable properties elsewhere located, free and clear, and

Whereas, the said party of the first part is desirous of selling said personal property and lease to said party of the second part in exchange for the real estate aforesaid, and

Whereas, the lease aforesaid contains a covenant that the said party of the first part hereto (the lessee therein named) shall not assign said lease nor underlet the premises therein named without the written consent of the lessor therein named, and

Whereas, such lessor is at present absent from the city county and State of New York, and such consent cannot be obtained until his return and

Whereas the parties hereto desire that the business now being carried on by said party of the first part shall be continued by said party of the second part, her heirs, administrators and assigns upon the land and premises in the city of New York aforesaid,

Now these presents witnesseth, that for and in consideration of the premises and of the sum of one ($1) dollar, by each to the other in hand paid the parties hereto do hereby agree as follows, viz:

The said party of the first part hereby bargains, sells, assigns, transfers and sets over unto said party of the second part all and singular the personal property, goods, wares, and merchandise, fixtures, tools, machinery, etc., now owned by him for the purpose of carrying on the business of buying and selling coal, and whatsoever incident thereto, not including the ice plant or business therein contained, now situated in and upon the land and premises known as lot No. 21 block 1761 section 6 as shown on the land map of the city of New York and in the buildings thereon erected, together with the good will of said business and the lease of said lands and buildings thereon for the unexpired term thereof.

To have and to hold the same and all of the same unto said party of the second part, her executors, administrators and assigns forever.

The said party of the second part, for and in consideration of the premises, hereby grants and conveys unto said party of the first part

certain lands and real estate situate in the city of Washington, District of Columbia, and,

Whereas, such lessor is at present absent from the city, county and State of New York and such consent cannot be obtained until his return, and

Whereas the parties hereto desire that the business now being carried on by said party of the first part shall be continued by the said party of the second part, her heirs, administrators and assigns, upon the land and premises in the city of New York aforesaid, now these presents witnesseth, that for and in consideration of the
239 premises and of *hee* sum of one ($1) dollar by each to the other in hand paid the parties hereto do hereby agree as follows, viz:

The said party of the first part hereby bargains, sells, assigns, transfers and sets over unto said party of the second part all and singular the personal property, goods, wares and merchandise, fixtures, tools, machinery, etc., now owned by him for the purpose of carrying on the business of buying and selling coal, and whatsoever incident thereto, not including the ice plant or business therein contained, now situated in and upon the land and premises known as lot No. 21, block 1761, section 6 as shown on the land map of the city of New York, and in the buildings thereon erected, together with the good will of said business and the lease of said lands and buildings thereon for the unexpired term thereof, subject however to three judgments aggregating the sum of $8,500.66 entered on December 24th, 1895, and February 11th and 28th, 1896, with interest and costs from said dates.

To have and to hold the same and all of the same unto said party of the second part, her executors, administrators and assigns forever.

The said party of the second part for and in consideration of the premises hereby grants and conveys unto the said party of the first part certain lands and real estate situate in the city of Washington, District of Columbia, and more particularly mentioned and described in a certain deed or deeds thereof duly made and executed by said party of the second part to the said party of the first part on the 26th day of March, 1896, and other valuable properties elsewhere located.

To have and to hold the same as therein described and subject to the incumbrances therein mentioned.

The said party of the first part hereby agrees that within a reasonable period after the return of the lessor in the aforesaid lease mentioned to the city, county and State of New York, he will obtain and procure the consent of the said lessor in writing to the assignment of the lease aforesaid and that in the meantime and until the procuring of such consent, said party of the second part shall and may peaceably hold, use and occupy said lot No. 21, block 1761 section 6 aforesaid for the purpose of carrying on the business of buying and selling coal, and whatsoever incident thereto, as heretofore conducted therein by the said party of the first part, as agent and manager of said demised premises for said party of the

first part hereto, and that such agency shall terminate upon such consent being obtained, and thereafter said party of the second part shall be the tenant thereof under an assignment thereof from said party of the first part to said party of the second part hereto.

In case said party of the first part hereto shall be unable to procure the consent of said lessor to such assignment of said lease then said party of the second part shall, during the continuance of said lease, be and remain the agent and manager of said party of the first part hereto with respect to the use and occupancy of said demised premises but nothing herein contained shall in any way lessen or diminish the title of the said party of the second part to the full and complete ownership of the personal property, goods, wares and chattels hereby sold to her or any part thereof.

In witness whereof the parties hereto have hereunto set their hands and seals, at the city of New York, the day and year first above written.

(Signed) S. A. DUTTON. [SEAL.]
(Signed) LILY ALYS GODFREY. [SEAL.]

Signed in the presence of—
HERBERT G. ANDREWS.
ELIZABETH K. HARDING.

CITY AND COUNTY OF NEW YORK, *ss:*

On this 26th day of March, 1896, before me personally appeared Stephen A. Dutton and Lily Alys Godfrey, the parties to the within instrument, to me known and known to me to be the persons described in and who executed the foregoing instrument, and they acknowledged to me that they executed the same.

(Signed) HERBERT G. ANDREWS,
Notary Public, New York County.

I hereby consent to the execution of the within instrument, waiving any and all right, title, or interest that I have or might have in and to the within-described premises.

Dated New York, March 26, 1896.

(Signed) CORA M. DUTTON.

Signed in the presence of—
HERBERT G. ANDREWS.

Endorsements: Peo. Ex. No. 43, in evidence. Stephen A. Dutton to Lily Alys Godfrey. Contract and bill of sale. Charles J. Pearson, counselor-at-law, 123 Liberty street, New York city.

Complainant's Exhibit No. 5, April 9, 1898.

By Mr. KEENE:

Q. State whether or not you had any conversation with Mr. Dutton prior to the execution of this instrument of March 26, 1896; and, if so, state what he said to you.

A. I had several conversations before that contract was signed. Mr. Dutton represented to me that he was the owner of the Scott Ice and Coal Company; that he owned all the stock and was the company.

Mr. DARLINGTON: We object to any testimony of the conversations of Mr. Dutton which are made in the absence of the other defendants in this case in so far as these defendants are concerned. Of course we have no objection *of* conversations against Mr. Dutton.

241 The WITNESS (continuing): That the business was of thirty years' standing, and that it was in good financial condition; that it was doing a flourishing business at that time; that there were no judgments against it; and he represented that he was the owner of a certain lease of twenty-one years and with the right of renewal for twenty-one years at 137th street and Madison avenue and the Harlem river; that he had only three judgments against him, amounting to about $8,500, which he was about to pay off. He represented that he was the owner of several apartment-houses in New York; that he owned a dock known as "pier No. 26, Brooklyn;" that he was the owner of large phosphate beds in Florida; that he owned coal mines in Virginia and lumber lands there. He represented that he owned the house that he was living in at # 137 West 71st street, which is a very handsome house and beautifully furnished, and that he paid $70,000 for it, and he represented that he was worth several millions of dollars.

Q. State whether or not you believed and relied on these representations.

A. I did; and that was what induced me to give Mr. Dutton my Washington property for the dock and the coal business.

Q. State when you next saw said deeds after they were executed and delivered to said Dutton.

A. I saw those deeds about the 6th of April, 1896. Mr. Dutton called with Mr. Herbert G. Andrews, and Mr. Dutton told me that there was some error in the deeds which were signed on March 26th, and requested that new deeds be executed; which was done accordingly.

Mr. DARLINGTON: I object to conversations with Mr. Dutton or with other parties in the absence of the defendants Wine, Warner, and Richardson, and this objection applies to all testimony of that character without being specifically repeated.

Q. Before whom were the new deeds executed?

A. Executed before Mr. Herbert G. Andrews, who took the acknowledgement.

Q. What were the circumstances in which you stood in reference to said lots at the date of the execution of this instrument and these deeds on March 26, 1896?

A. My four lots were only improved—two of them by a small brick house which brought in only about $50 a month, and the taxes and interest had to be paid, and for the amount of money that

was invested in that corner I had no return; and Mr. Dutton represented that the dock and coal business would bring in a good income. I thought the business would be a very good one for my brother, and that it would afford him a salary.

Q. Who acted as your lawyer in your transactions with Mr. Dutton, to which you have referred, concerning your said lots?

A. Charles G. Pearson and Herbert G. Andrews.

Q. How did you become acquainted with them?

A. Mr. Dutton recommended them to me and said they were his lawyers; that they were capable and honorable men, and that he was sure that if I employed them that I would be satisfied with their work.

242 Q. What, if anything, did they advise you in regard to the property and the transaction regarding which the deeds were executed to Mr. Dutton and the agreement entered into between you and him?

A. Mr. Herbert G. Andrews said that he had made search of the title, and that it was good in Stephen A. Dutton.

Q. Who prepared the agreement and bill of sale of March 26th, offered in evidence and marked Exhibit No. 5?

A. Mr. Herbert G. Andrews.

Q. Did you consult any other lawyer or person at the time in connection with this transaction with Mr. Stephen A. Dutton?

A. No; I did not. I relied—I had full confidence—in Mr. Herbert G. Andrews' ability and integrity.

Q. What was the condition of your health shortly after the transaction with Mr. Dutton, to which you have referred, of March 26th, 1896?

A. I was very ill at the time, and about the 21st or 22nd of April I completely broke down, and I was compelled to call in a doctor, under whose daily care I was until the end of June. I had appendicitis and nervous prostration, and I was convalescing until about the middle of July, 1896.

Q. What did you subsequently learn was the condition of Mr. Stephen A. Dutton after he made the representations to you that you have mentioned?

A. I learned that Mr. Dutton was insolvent; that he was wholly unable to pay his debts; that he had a great many judgments against him; that a receiver had been appointed for the Scott Ice and Coal Company; that a receiver had been appointed of him and all his property, and that an injunction — brought restraining him from disposing of any of his property.

Mr. DARLINGTON: I object to so much of the answer as purports to give information derived from others as hearsay.

Q. Did you ever receive anything for your property?

A. No; nothing.

Q. I will ask you to look at this letter dated April 17th, 1896, from B. H. Warner & Co.——

A. Yes, sir.

Q. And state if you remember when you first saw it.

A. I remember distinctly the occasion when my mother received the letter. She read it and handed it over to me and said, "Why, Lily, read this; there must be some mistake; it can't be"——

Mr. DARLINGTON: I object to the conversations between this witness and her mother as being incompetent as against any of the defendants who were not present at this conversation, and move to exclude any statement of that kind.

The WITNESS (continuing): And she handed it over to me and when I read it I said, "Why, there must be some mistake; it is impossible; Mr. Dutton told me that he had just obtained a building loan on that property and he was about to put up a large apartment-house," and he asked us for the keys; "There must be some
243 mistake about it," and we both agreed that there was a mistake somewhere, so when Mr. Dutton came in I handed him the letter and asked him to read it——

(Counsel for the defendants makes the same objection.)

The WITNESS (continuing): And he said, "Why, that is a mere clerical error; they have got the thing all wrong. Why, I have just obtained a large building loan and I am going to put up an apartment-house, and have asked for the keys to tear down the little house that is on the corner. Why, I brought the plans right now to show you of the apartment-house," and he spread all the plans down on the table, and he sat down and explained the whole thing to us, and even asked our opinion as to what color the brick should be to the front of the apartment-house, and explained everything so satisfactorily that no doubt or suspicion in any way entered our minds, and from that day I never thought of the matter until my attention was called to it in the answer of Louis Wine Richardson to my bill in equity. Mr. Dutton said, "Just write a line and enclose the keys and I will take charge of it and send it," and I handed him the keys and he went away.

Q. What, if anything, did you do as soon as you learned the fact that Mr. Dutton's representations to you were false?

A. I laid the whole matter before the district attorney in New York, who had Stephen A. Dutton indicted, and he was afterwards tried, convicted, and sentenced to the State's prison.

Q. When did you first learn that Stephen A. Dutton had executed a deed of said lots to Louis Wine Richardson?

A. I first learned it from the office of my lawyer, Henry Wise Garnett, of Washington, D. C., about the time that the bill in equity was filed.

Q. State whether or not you had any knowledge at that time that Lewis W. Richardson was only a dummy who represented B. H. Warner and Lewis D. Wine in the conveyance of the said lots from Stephen A. Dutton.

A. No.

Q. When were you first informed that B. H. Warner and Louis D. Wine claimed to own the said lots in the name of Louis W. Richardson?

A. I first learned it after the conviction of Stephen A. Dutton about the third week in December, 1896.

Q. State whether or not you ever met Louis W. Richardson.

A. Yes, sir; I met Louis Wine Richardson, I think, in the latter part of April, 1897. I went down to Hyattsville and asked Mr. Keane to go with me. At that time he had no professional relation to this case, and Mr. Louis Wine Richardson was at the station. We called Mr. Louis Wine Richardson's attention to the falsity of his answer to my bill in equity, and I expressed deep regret that so young a man should have been made a tool of in the manner that he was, and I requested him to make restitution and give me back my property. Mr. Richardson said that he would think it over and take until the following day to give the answer, and I have never seen or spoken to him since.

244 Cross-examination.

By Mr. DARLINGTON:

Q. Miss Godfrey, would you mind telling us how old you are?

A. I am over 21 years old.

Q. I do not like to be inquisitive, but would you kindly tell us how much older than 21 years you are?

Mr. KEANE: If you will look in the original bill in equity, I think you will find it stated there under oath.

Mr. DARLINGTON: If that be so, the witness will have no hesitation in answering the question.

By Mr. DARLINGTON:

Q. Do you object stating your age?

A. Well, I do not think it is necessary; it is in my bill in equity.

Q. Do you decline to state your age?

A. I cannot tell you the exact date.

Q. Are you over 30?

A. I am not.

Q. Are you 29?

A. No, sir.

Mr. DARLINGTON: I consider it important to some phase of this case that the age of this witness be stated, and I give notice that I shall object to the reading of her testimony until the question here asked is answered.

Mr. KEANE: Counsel for the complainant states that the question is evidently intended only to annoy a lady; a delicate question that the counsel has already been fully apprised of, inasmuch as it is stated under oath in her original bill in equity filed in this cause.

Mr. DARLINGTON: I have not the slightest wish to annoy the witness. I ask the question because I think it may become material in the progress of this case. If the original bill contains the statement of it, I omitted to notice it.

The WITNESS: Well, it does appear.

Q. Even if it does, I do not think I am to be precluded from examining the witness about the matter, because that is an *ex parte* statement.

A. I can swear that my bill, to which I have sworn to, is correct as to my age.

Q. Why do you hesitate to tell us now?

A. Because I do not know exactly my age unless I count back.

Q. Give us as near as you can to it.

A. No; I have already sworn to it now.

Q. Is there any mystery about your age?

A. No; none.

Q. Can you tell us within a year or two how old you are?

A. Well, I think about 25.

Q. You are not as much as 28?

A. Oh, no.

Q. Were you a witness at the prosecution of Stephen A. Dutton?

A. I was.

Q. Did you not testify that you were 29?

A. No; I did not.

245 Q. If that appears on the stenographer's notes, it is a mistake?

A. It is.

Q. When did you first become acquainted with Stephen A. Dutton?

A. My mother and I were on Riverside drive in 1895, and we saw a sign on a very pretty piece of property about 81st street—on a sign. It said, "Apply to the Land and Improvement Company"—some number on lower Broadway. We were downtown, and mother went into a building where she thought the Land and Improvement Company was in and she asked the elevator boy, and he said the Land Improvement Company was on the top floor, and we took the elevator and went into the office with "Real estate" on the door and asked if that was the Land Improvement Company, and a man came forward, which we afterwards learned was Mr. Allen A. Dutton, and he said, "What can I do?" and mother said she wanted to know about a certain lot on Riverside drive which the Land Improvement Company is the agent of, and asked if he was a real-estate man. He said, "No; he was not, but he was in the real-estate business," and he asked if we wanted to buy the property, and my mother said, "No, but she wanted to exchange it for some Washington property," and Mr. Dutton said, "Well, I have a great deal of Washington property," and after a long conversation he took it down in his book. We went in there later to inquire whether Mr. Dutton had done anything about the property, and he was out, and they said he was at his brother's, Stephen A. Dutton, 31 Broadway. We went down there, and as he was not there, we had a conversation with Stephen A. Dutton, and that is how I met Mr. Stephen A. Dutton.

Q. That was about when?

A. Well, it was some time in 1895; early summer of 1895.

Mr. KEANE: When you met Stephen A. Dutton?

A. Allen A. Dutton.

By Mr. DARLINGTON: Stephen A. Dutton?

A. I met Mr. Stephen A. Dutton in March, 1896.

Q. And you met him in the way you have described?

A. Yes, sir.

Q. Did you not testify in Dutton's trial that you met him through an advertisement?

A. Oh, no.

Q. How long after you met Stephen A. Dutton was it that negotiations resulted in these deeds of your Washington property; when were they begun?

A. I do not remember exactly; about two weeks.

Q. The agreement bears date March 26th?

A. Yes, sir.

Q. As I understand it, you first met Stephen A. Dutton when you were searching for Allen A. Dutton?

A. Yes, sir.

Q. You went to Allen A. Dutton's office, but you did not find him there, and then you went to Stephens A. Dutton's office?

A. My mother went to Allen A. Dutton's, and then I met Stephen A. Dutton through my mother.

Q. What you told us about Allen A. Dutton and his connection was what you learned through your mother?

A. Yes, sir; I met Allen A. Dutton myself, but I met Stephen A. Dutton——

246 Q. I am now enquiring solely about Stephen A. Dutton.

A. Yes, sir.

Q. How shortly afterwards that your mother told you that she met Stephen A. Dutton was it that you met him?

A. Very soon.

Q. Can you tell how long?

A. I cannot tell.

Q. Can you tell what led to your seeing him?

A. Why, Mr. Stephen A. Dutton told my mother that he would look into the matter of selling the Washington property.

Q. Did your mother tell you that she had met Mr. Stephen A. Dutton?

A. Yes, sir.

Q. Negotiations began immediately?

A. Yes, sir.

Q. How frequently did you see Mr. Dutton and where prior to the signing of the agreement of March 26th?

A. I saw him almost every day down at the office and sometimes at my own house.

Q. Where generally?

A. Down at his office, I think.

Q. You were down there most every day?

A. Almost every day, I think.

Q. In company with whom?

A. My mother, always.

Q. When did you first see the agreement of March 26th and where?

A. Several days before we signed it. I have forgotten exactly how many.

Q. Where?

A. In Stephen A. Dutton's office.

Q. Had it been prepared before or after its terms had been discussed and agreed upon between Mr. Dutton and your mother?

A. It was prepared afterwards.

Q. Did you have it in your possession at any time?

A. Yes, sir; I read it over a great many times.

Q. Where?

A. In Mr. Dutton's office—read it over and discussed it very many times.

Q. What was the occasion of reading it so frequently and discussing it so much?

A. We wanted to be sure that Herbert G. Andrews had protected us, and that everything was in the contract that Mr. Dutton said he was going to give us for the property—my property.

Q. Had you seen the property which you referred to as the dock property before you made the agreement?

A. Yes, sir.

Q. How frequently?

A. I think I saw it once or twice. I have seen it since, of course.

Q. I am referring now to the time you saw it before the contract?

A. Positively once.

Q. When and under what circumstances?

A. Shortly before March 26th. I went to see it. It was a rainy day. Mother and I took a carriage from our house and went to Mr. Dutton's and asked him if he would not come with us and show us about the property, and he came and some man that was calling there, some friend of his, and he asked us if we would allow—if he could not come, to-, and we all went up there, and Mr. Dutton pointed out all of the advantages of the dock and the situation of it, and pointed out the different parts of the coal dock and the pockets.

247 Q. Did he show you the horses and wagons?

A. He pointed out the horses—not the horses, but some wagons were standing there.

Q. Do you know the man who was with you?

A. No; I do not. I would know him again. His name, I think—he came from Chicago. Dutton said that he was in the soap business, and that he had known him a great many years, and that he was an old friend of his.

Q. Do you recall his name?

A. I cannot remember it. He sent to the district attorney's office and said that he would help us in any way he could in the Dutton trial.

Q. Who told you that?

A. Mr. Osborn told me that.

Q. Were you to give this Washington property for the dock property?

A. Yes, sir, and the coal business.

Q. Give nothing but the Washington property?

A. No; I was also to give him some Adirondack property, some Maine property, and some Washington property.

Q. Is that all?

A. That is all.

Q. Did you give any property in Seattle?

A. That is in Washington State, you know.

Q. Where was the Maine property that you were to give?

A. It was in Belfast, Maine.

Q. Belfast or Waterford?

A. Belfast.

Q. Did you not say in the criminal trial that it was Waterford?

A. No; I am not sure. I said it was water-front property.

Q. Did you ask of Mr. Dutton any reference as to his character or standing, or did he give you any?

A. He showed us a great many papers that he had the signatures of a number of people that I knew, and I believed him to be what he represented.

Q. Did he mention in his references any persons that you can recall?

A. No; not his references. He mentioned a great many people that I knew, and saw their signature on the various papers.

Q. Can you recall some of the persons whom he mentioned that you knew of?

A. Robert B. Roosevelt and Mr. Warner Van Norden and Mr. Francis Howland.

Q. Did he mention Twombly?

A. You see I met Mr. Twombly at Mr. Dutton's office.

Q. I asked you if he mentioned Mr. Twombly.

A. I met him at Mr. Dutton's office. I met him several times. He offered to give information about the dock and the coal business, and told us that it was a very fine business.

Q. I am not asking you what Mr. Twombly told you. Who was Mr. Twombly? Do you know anything about him?

A. Mr. Twombly represented himself to me as a great friend of Mr. Dutton's, whom he had known for a number of years.

Q. Do you know who Mr. Twombly was?

A. Mr. Twombly was——

Q. Did you not testify in the criminal trial that he was a member of the Vanderbuilt family?

A. Mr. Dutton told me that he was.

248 Q. Mr. Dutton also mentioned Mr. Sterling?

A. He did, a number of times.

Q. Do you know Mr. Sterling?

A. No; I do not think I ever met Mr. Sterling.

Q. Didn't you testify in the criminal trial that Mr. Sterling was a member of your family?

A. My family?

Q. Yes.

A. No; he was an old friend of Mr. Dutton's.

Q. During your interview with Mr. Dutton, was there anything said about a paper known as the Cram lease?

A. Oh, yes.

Q. Did you give any attention to that paper?

A. I read it a great many times, over and over again, with Mr. Dutton, without Mr. Dutton, with my mother, and with Mr. Andrews.

Q. You read it line by line, did you not?

A. Yes; I did.

Q. Why?

A. The paper Mr. Dutton represented to be the lease—that Mr. Dutton had given me with the signature of Mr. J. Sargent Cram—I afterwards learned that that document was not the right one.

Q. Did you make any objection to it at that time?

A. Yes, sir. Let me see, I made some objection that it stated that the signature of Mr. Cram was necessary and Mr. Dutton said it was not, and Mr. Andrews said it was necessary, and my mother and I agreed that if we could not have Mr. J. Sargent Cram's signature we would not make the transaction.

Q. Unless you had his signature to what?

A. I do not know how to put it exactly—the assignment of the lease.

Q. Mr. Dutton proposed to assign that lease to you, and you would not do it unless Mr. Cram's signature appeared on it?

A. Mr. Cram was away in Europe at the time, and the contract and the bill of sale was drawn up instead.

Q. Instead of making an assignment?

A. Well, he made an assignment.

Q. In addition to that he made a contract and a bill of sale instead of the lease?

A. Well, it was a contract; I mean in the way of business; conveyed all his right, title, and interest to it—to the dock, I mean.

Q. That is the paper you referred to of March 26th?

A. Yes, sir.

Q. Instead of the assignment of the lease?

A. Yes, sir; that was supposed to include the whole thing. We should have Mr. J. Sargent's Cram's signature when he returned from Europe.

Q. Were these interviews with Mr. Andrews in the presence of Mr. Dutton?

A. Mostly in Mr. Dutton's presence and several times without him.

Q. Why without him?

A. It happened that Mr. Dutton was not in the room all the time.

Q. How many deeds did you execute to Mr. Dutton?

A. In March, 1896?

Q. Yes.

A. I think I executed deed to lots one and sixty-six, in square 134, and my mother executed the rest.

Q. How many were there altogether?
A. I do not remember. I think there were two or three; I do not know, either.
249 Q. Were there not four?
A. I do not remember. I do not know how that was divided up.
Q. Do you know where these deeds now are?
A. I think—I do not know where they now are.
Q. Can you tell us anything about the preparation of them—who prepared them and from what data?
A. I think Mr. Herbert G. Andrews prepared them with the aid of other deeds he had there.
Q. Who furnished him with the other deeds?
A. My mother and myself.
Q. What part did your mother take in the preparation of the deeds?
A. She helped him.
Q. In what way?
A. I do not really remember. I know Mr. Dutton was in a hurry to get the transaction through, and I think we all helped him more or less.
Q. I wish you would tell us what part you and your mother did in helping.
A. I do not remember.
Q. Can you remember any part of it?
A. I remember we brought some old deeds to help—I really do not remember.
Q. Do you remember your mother making a draft of one or more of the deeds?
A. I do not remember exactly what she did; I remember that she helped Mr. Andrews.
Q. Well, if you remember that, can't you tell what help she gave him?
A. She showed him the old deeds.
Q. What dealings had you with real estate before this transaction?
A. Well, I have not had much except we owned some property; I heard it discussed.
Q. Had you bought any before or sold any before?
A. Not personally. I had in connection with my mother.
Q. How often?
A. Not very often.
Q. What property had you bought and what property had you sold?
A. I did not say that I had sold any or bought any. I say my family did.
Q. You say you had in connection with your mother. Now, tell us what property you had in connection with your mother prior to this transaction?
A. In connection with my mother we sold, bought, and exchanged in connection with an estate.

Q. What property had you when she bought and sold?
A. Some in New York.
Q. Where?
A. Well, my house—that is, it was not mine then—No. 287 West 70th street, and a house two doors from Broadway on 35th or 36th street. I don't remember exactly which street it was.
Q. You bought these two pieces?
A. I say they were exchanged, and then another one—let me see; I will get it right in a minute—on 34th street—East 34th street—in New York.
Q. That you bought yourself?
A. Exchanged and bought in connection.
Q. What I want to know, if you acquired any piece of property you are now speaking of.
A. The houses were acquired.
Q. How about the other piece of property you mentioned?
A. I think that is all.
250 Q. Did you acquire the other piece of property that you mentioned, or did you part with it?
A. They were sold.
Q. You gave those in exchange for your house. Is that it?
A. No. One was sold and one was exchanged partly, you know.
Q. I do not know. I am trying to find out. Just explain these transactions, so that we will understand them.
A. We sold one house that was left from the estate of my grandmother. To settle the estate it was sold. It was left in the will and sold. The other one was also sold. It was exchanged, partly for a house and part-y for cash.
Q. Had you had any other real-estate transaction with your mother?
A. That is all.
Q. When did these transactions take place?
A. I really cannot remember the dates.
Q. Did you not testify in the criminal trial that you had previously bought and sold real estate?
A. I really do not remember. I do not remember that.
Q. Is it not a fact?
A. That I did?
Q. Yes.
A. I do not remember.
Q. Is it not a fact, with your mother, that previously both bought and sold real estate?
A. In connection with this estate. The estate had to be settled. That is the way the property was sold and acquired.
Q. In whose name was this Maine, Adirondack, and Washington property?
A. I think—it was still in the name of my mother.
Q. When were these properties acquired?
A. I do not know, really.
Q. You do not know?
A. No, sir.

Q. Did you know of the transaction at the time they were acquired?

A. No.

Q. When did you first learn that these properties had been acquired?

A. Had been acquired?

Q. In your mother's name.

A. Well, I really do not know. I could not say.

Q. Can you approximate the time?

A. No.

Q. Is there any reason, Miss Godfrey, why you remembered your age at the time you filed the original bill — than you do now?

A. Well, I thought a great deal about it at that time, as I wanted to get it positively correct. That is the way I knew it better than I do now. I could not tell you.

Q. You do not now remember your birthday?

A. My birthday? Yes, sir; I remember my birthday, but I do not remember exactly the year. To count back it would take a long time.

Q. Do you not remember testifying in the criminal trial that you examined this agreement of March 26th with great care and with very much interest to see if Mr. Andrews had protected you in every way?

A. I remember distinctly saying that.

Q. That is correct?

A. That is correct.

Q. Do you remember also saying you examined the contract over and over again at numerous times?

A. The same contract you referred to?

251 Q. Yes; that it was a matter you were extremely interested in?

A. Yes, sir—that is, word for word.

Q. Do you not remember saying you went over the contract with Mr. Dutton paragraph by paragraph, and that every detail was gone over by yourself, your mother, and Mr. Dutton?

A. Yes, sir.

Q. And that your mother had carefully examined the same as you had done?

A. Yes, sir.

Q. Do you also remember testifying that your mother wrote out a list of the property you were to transfer to Mr. Dutton?

A. I remember that there was some sought of a list made of the property at Mr. Dutton's dictation.

Q. Didn't you say that you and your mother wrote out—furnished Mr. Andrews with a description of the property which was to go into the deed?

A. No; I do not remember that; I may have done that.

Q. Was or was not it a fact?

A. That she wrote out the description of the property for Mr. Andrews?

Q. Yes; to go into the deed.

A. No; I do not remember it; it may have been so, but I do not remember it.

Q. Now, please tell us how you came to execute the deed of the Washington property in April.

A. Mr. Dutton called with Mr. Herbert G. Andrews about the 6th day of April, and Mr. Dutton said there was some error in the deed of March 26th, 1896, and he requested new deeds be executed, and it was done.

Q. He told you that the acknowledgment was not in the proper form, or something of that sort?

A. I do not remember. I think he said there was some error. I do not remember exactly, except there was some error.

Q. This was April the 6th?

A. April the 6th, I think.

Q. Did you read these second deeds over?

Q. I do not think I did. I think I just had confidence in Mr. Dutton and I signed them.

Q. Do you not remember testifying in the criminal prosecution that you generally read all business papers over a great many times so you could thoroughly understand them?

A. Yes, sir; I thought I understood my own deeds, as I had already read them over.

Q. There was something said about judgments against Dutton at the time of this agreement of March 26th, was there not?

A. He said there were three small judgments against him—about $8,500—and that he was about to pay them off immediately.

Q. Did you not subsequently execute a later agreement in which you assumed the payment of these judgments?

A. No; I did not. I never assumed these judgments, but I was requested, on account of the paper that was served upon me, in case I was called on the witness stand—I was requested by Mr. Dutton that so as to pacify some people that were employed by the ice trust to fight him, to have them put into the contract. They put that into the contract the last part of June or the beginning of July—or the middle of July.

252 Q. That was put in the agreement that you bought the property subject to the judgments?

A. No; not subject to the judgments. I did not understand it as such.

Q. What was it you put into the contract in June?

A. That he had outstanding against him $8,500 worth of judgments.

Q. You put that into the contract for what purpose?

A. That in case I was called as a witness in any of the cases where the ice trust was fighting him, and there were some people employed by the ice trust to annoy him, and to cause no further trouble, and that he was to pay them off; that he had paid most of them off and was about to pay the rest.

Q. Have you that agreement?

A. It was not an agreement. It was a little piece of paper put in tthe agreement after it was made.

Q. Is not this agreement of March 26th?

A. I think it is, yes; that clause (indicating) was put in. The clause "subject, however, to three judgments, aggregating the sum of $8,500.66, entered on December 24th, 1895, February 11th and 26th, 1896, with interest and costs from said date."

Q. Point that out to me—show me where that is.

A. I will mark it. (The witness marks with pencil.)

Q. Is this paper which you have produced and filed bearing date March 26th, 1896, the paper which you executed that day?

Mr. KEANE: I beg your pardon, we have not filed that. It is too important, as we need it.

Mr. DARLINGTON: It is offered in evidence.

Q. Is this paper which you have offered in evidence purporting to be the agreement of March 26th the original agreement between you?

A. It is the same agreement I signed on March 26th, with the exception of one page, which was rewritten about the first part of July, 1896.

Q. That was put in there to make it appear that you had taken the property subject to these judgments?

A. No; not to appear that I would take it subject to the judgments. I did not understand it as such. Mr. Dutton told me that they had to be mentioned to not cause any trouble with the ice trust.

Q. But you read this additional matter, did you not?

A. Yes; I think I did.

Q. And consented to have it go in?

A. Yes, sir.

Q. And states explicitly that it is subject to these three judgments?

A. I had implicit trust in Mr. Dutton, and he told me it did not affect my dock property or coal business in any way and it was simply to pacify the people that were employed by the ice trust, and that he had paid most of these judgments off.

Q. He expected litigation with other people in the ice business?

A. He was having a fight with the ice-trust people.

Q. This was taken out and the new put in with your consent?

A. Yes, sir.

Q. Taking your property subject to the judgments?

253 A. I did not understand that it was subject. The dock property was in any way affected by the judgments.

Q. But you say that this addition to which you assented did say that you took it subject to the judgments, did it not?

A. I understood that the judgments had all been paid off with the exception of $1,900. I knew some of the other judgments were paid off. If the word "subject" was the right thing to put in there, and if it was not the right thing, I had confidence in him and I did what he told me.

Q. That was in June?

A. The first part of July. Andrews said it was the right thing, too.

Q. You did not understand me to ask you what anybody said to him?

A. No, sir.

Q. I understand you to say it was put in there knowing that you had not bought subject to the judgments, but if you were called as a witness in a litigation between Dutton and the ice trust it would appear that way?

A. Well——

Q. Is that correct?

A. It would appear that way. I did not understand that it would affect my dock and coal business at all, but simply that he had these judgments and they ought to be mentioned. That is all, as I understood it.

Q. Did you not say it was put in there so if you were called as a witness in this ice-trust litigation it might appear in that paper?

A. No; he said it would pacify them to have it there. I do not know what reason he had.

Q. What did you say about your being a witness?

A. What did I say about it just now?

Q. Yes; about your being a witness?

A. I stated that several people were trying to subpœna me. Mr. Czaki called one morning and gave me a paper, and I asked him what it was, and he said, I want to know what property you have of Dutton's. This was about the 21st of April, 1896, and I said, "Mr. Czaki, you know very well that I have given my Washington property to Mr. Dutton in exchange for the dock property, at 137 street, Madison avenue, and the Harlem river, and the coal business."

Q. I am not asking you about any conversation you had with Mr. Czaki.

Mr. KEANE: I object to interrupting the witness. I ask that the witness be allowed to finish.

The WITNESS (continuing): He said, "You do not know Dutton. He is a very different man from what you think he was. He does not own his house, and I can tell you a number of things about him, but I do not like to tell them to you," and I said, "Mr. Czaki, you spoke very differently a few days ago." You said that Mr. Dutton was a very wealthy man; that he owned his house; that he owned a great deal of property in Washington; that you were his lawyer and his friend, and that you were sorry that Mr. Dutton has not employed you before, and he said—just at that time
254 the bell rang and Mr. Dutton came in, and I said, "Mr Czaki, if these things are true, say them before Mr. Dutton," and I turned to Mr. Dutton and then Mr. Czaki slid out the door, and I did not see him again, and I said to Mr. Dutton, Mr. Czaki has given me these papers, and said, "I want you to be a witness. He said you do not own your house, and tried to say that you were very different from what I thought you were," and he said, "Why, Mr.

Czaki has turned against me, as the ice-trust people have influenced him," and he said, "You need not trouble about this paper, you know I have paid most of these off—these judgments off—and you need not worry about them," and I said, "Well, Mr. Dutton, you do own your house," and he said, "Yes; I bought it and gave it to my wife." I gave him the paper and have never seen it since.

Q. You have answered about everything except what I asked you, which was, what was said to you by Mr. Dutton about your being a witness in this ice-trust litigation?

A. He said, "In case you are called as a witness it would be better to mention these judgments."

Q. In that you consented to have it changed?

A. Yes, sir.

Q. Now, since you have told us something about what occurred between Czaki —, what, if anything, do you know about his having visited Washington at the time of this interview, in April, *to* which you have last spoken of?

A. I do not remember whether he visited there or not.

Q. You knew, then, that he had been here to see about disposing of that property?

A. Mr. Dutton had never an idea of disposing of the property. Dutton was going down to Washington to obtain a building loan on the property.

Q. After Mr. Czaki's return did you not converse with him about his visiting Washington—he and Mr. Dutton?

A. I think when Mr. Czaki called to get my signature to the bond on the dock property that was fraudulently obtained by him and Mr. Stephen A. Dutton—I think he mentioned that he had been to Washington and had seen the lots and the Connecticut Avenue property.

Q. At the time Mr. Czaki called upon you with Mr. Dutton in regard to the bond of which you speak, do you not remember that you and your mother asked whether he had seen the property?

A. I do not remember. I think I remember that he stated he had seen it.

Q. Do you remember telling him that you had received a letter of Dutton from Washington stating that he succeeded in obtaining a loan thereon?

A. No, sir.

Q. And that you were glad that he experienced no difficulty? You do not recall that?

A. No; I do not recall that.

Q. Do you remember asking Mr. Czaki what he thought of a woman lawyer, referring particularly to Mrs. Mussey?

A. Oh, no; I do not remember any such thing.

Q. Did you appear as a witness in obedience to the summons or subpœna that Mr. Czaki showed you?

A. No; I was too ill.

Q. You were not too ill to see him or give it to Mr. Dutton?

A. No; nor too ill to see Mr. Czaki the morning he called.

255 Q. On that occasion did Mr. Czaki tell you that Mr. Dutton had stated to him that he only mortgaged the property in Washington, but that he, Czaki, since discovered that he had sold it?

A. No; he did not.

Q. Did he not further tell you that he now intended to find out, by calling you as a witness, just what your business relations were with him?

A. He said he wanted to find out what property I had of Mr. Dutton's.

Q. He did not then tell you that he had a receiver appointed of all Dutton's property?

A. No; he did not.

Q. He did not tell you on that occasion that Mr. Dutton was a swindler or scandaler or words to that effect?

A. He told me that he was not what I thought he was, and that he knew bad things about him, and he said they were too bad for him to tell.

Q. The time you referred to when Mr. Czaki slid out the door, did he not tell you then in Dutton's presence that he had no inclination to deny the truth of anything?

A. No, sir; he did not say any such thing; he slid out of the door.

Q. After this paper was served on you and there was some talk of making you a witness did you still go to see Mr. Dutton at his office or somewhere else?

A. I saw him in my house.

Q. Any other place?

A. I do not think so. When do you mean?

Q. After this subpœna or summons was issued.

A. I was taken ill, and I did not go out until about July, I think.

Q. Do you remember any times when your mother used to meet him at the lunch-room instead of at his office?

A. In July it was very warm weather, and we wanted to see him on business, and we either saw him at our house or in the parlor of the Astor house.

Q. Why did you meet him at the Astor house instead of in his office?

A. The reason only was several people were trying to serve me with papers, and also that it was pleasanter there than in his office.

Q. Why did you object to being served with papers?

A. I did not want to be served with papers; it was not pleasant to be served with papers.

Q. Did you not testify in his trial that you met him there because he suggested you might be served with papers and made a witness against him?

A. No, sir; I do not remember that.

Q. Is it not a fact—did you meet him for that reason?

A. For the reason stated.

Q. Is it not a fact that it was at his suggestion and to avoid being made a witness against him?

A. At his suggestion, and it was pleasanter there than at his office, and on account of the papers being served.

Q. You have not told us what I have asked you twice, whether you did not testify in the criminal case, whether it is not a fact that you met him at the Astor house by reason of his suggestion and in order to avoid being served with a paper and made to appear
256 as a witness against him?

A. I do not remember the exact words I used, but it is just as I told you.

Q. Is it not a fact that you met him there wholly or partly at his suggestion to avoid being summoned as a witness against him?

A. It is a fact my mother and I went there because it was pleasanter than his office, and also that I might be served with papers there in his office.

Q. Papers that were to be required to be served as a witness against him?

A. I do not know whether against or for him.

Q. You did not know what the papers were that were to be served?

A. No; he had some litigation with the ice trust and the ice-trust people were fighting him.

Q. If you testified in the criminal case a year or more ago, do you think your recollection then or now would be better about the facts?

A. I think my recollection is very good both times.

Q. If you testified then that you met him at the Astor house at his suggestion and in order to avoid having papers served upon you and made to appear as a witness against him, that is correct?

A. It is correct just as I have stated it several times.

Q. Is it correct or not?

A. Why, it is correct as I have stated it. I cannot state it more plainly or fully.

Q. Is it correct as I have stated it?

A. It is correct as I have stated it.

Q. Is it correct as I have stated it?

A. No, sir; because you have not stated the whole part of it.

Q. You mean because I have not said it was not pleasanter there than at his office?

A. Yes, sir; and also tried to serve me with papers.

Q. Did you not testify in the criminal case that the papers were summons to appear as a witness against him?

A. I really, Mr. Darlington, do not remember any more than I have told you.

Q. At what value did you ask for the various properties which you were to give to Mr. Dutton here, in Maine, Adirondack, and the State of Washington?

A. I do not remember. I remember the Washington property; the corner was $55,000, and the house 1706 Connecticut Ave., $22,000.

Q. I wish you would think a moment and think what you told him they were worth.

A. Altogether?

Q. Yes.

A. I do not know the value; the appraisement had not been made on the Adirondack, the Washington State, and Maine property for a long time; I do not know the value. He wanted me to put some value on them, and I said I could not. I said I did not know, and he said, I would like it to appear that you had paid $150,000 for the dock and the lease, and I said, "Why, Mr. Dutton, you can place the property at any valuation you like, but I do not value the property at any such sum as that."

Q. Did you ever employ any persons in connection with this dock and coal company you were to acquire from Mr. Dutton?

A. I don't think so.

Q. Can you be clear about that?

A. Whether I employed them or just talked over the matter?

257 Q. Did you actually employ any?

A. No; nobody.

Q. Did you or not engage some of the men there to continue there as your own employés?

A. No. Mr. Dutton recommended two or three men, and I took it into consideration whether I would have them or not.

Q. You did not see them yourself and tell them to remain in your employ?

A. I think I talked with a man named Clark & Gillette.

Q. What was that talk on your part? What did you tell him?

A. I told him that Mr. Dutton had recommended them as honest men for the coal business, and that so far as I knew I would allow them to remain on the dock if they knew about it.

Q. Did you not testify in the criminal suit that you corresponded with Dutton from the middle part of March until you discovered the swindle—the latter part of July or the first part of August?

A. I do not remember.

Q. Do you remember whether you did correspond with him down to that date?

A. I think I wrote several times and my mother wrote several times.

Q. Have you a copy of the correspondence?

A. Oh, no.

Q. Have you Dutton's letters to you in reply?

A. Have I?

Q. Yes.

A. Mr. Dutton never wrote any letters that he could help. He wrote me only once.

Q. You wrote to him and your mother wrote to him. Did you not get any answer?

A. He always answered by sending some one or came himself.

Q. Did you testify in the criminal trial that your first doubt about Mr. Dutton was about April 17th or 18th, when Mr. Czaki stated to you that Mr. Dutton had been arrested several times?

A. No; I did not believe Mr. Czaki.

Q. You did not testify that your first shadow or doubt was about that time?

A. I don't think so.

Q. Mr. Czaki did tell you Dutton had been arrested repeatedly?

A. No; I don't think so. I don't remember.

Q. Did you not testify in the criminal trial that you used to meet Dutton in the ladies' parlor of the Astor house because Mr. Czaki was trying to serve you with a subpœna in a supplementary proceeding against Dutton, and Dutton wished you not to appear because you might say something that would damage him?

A. I do not remember.

Q. Could you have stated that and have forgotten the facts stated?

A. Yes; I could have forgotten; yes.

Q. You think that you may have met him in the ladies' parlor, for the reasons I have stated and so testified a year ago and now forgotten it?

A. I met Mr. Dutton in the parlor of the Astor house because it was pleasanter and because several people were trying to subpœna me.

Q. If you knew and swore a year ago, about that time, they were trying to serve you with a subpœna and make you a witness in the supplementary proceedings against Dutton, do you think you
258 could have forgotten that at this time?

A. I did not know there were supplementary proceedings.

Q. If you knew it and swore to it at the Dutton trial, do you think you have forgotten it since?

A. Yes, sir.

Q. Have you so forgotten?

A. I don't remember saying that.

Q. Did you not testify in the criminal trial that Dutton told you you had not better come to his office, because these people were waiting to serve you with a subpœna, and it was better to transact your business at the Astor house?

A. He may have so stated.

Q. Is that true?

A. He told us it would be better to go to the Astor house, as it would be pleasanter.

Q. And thereupon you consented to meet him at the Astor house and thus to avoid to appear as a witness?

A. Mr. Darlington, that isn't the way; you said that before.

Q. I want to get an answer.

A. I have answered it over and over again.

Q. You decline to make any further answer than you have given?

A. Yes, sir.

Q. Why did you prosecute Mr. Dutton?

A. He obtained my property by fraud.

Q. You thought he ought to be punished?

A. I thought that the district attorney's office should be apprised of the fact, and they had him arrested.

Q. Do you remember how long the trial lasted?

A. No; I cannot remember exactly; I think five or six weeks.

Q. Were you present through-t the trial?

A. Every day.
Q. When did you last see Mr. Dutton?
A. Well, I really do not remember.
Q. Tell us as nearly as you can.
A. Several months ago.
Q. Where?
A. In the State prison—Sing Sing—Sing Sing State prison.
Q. What lead to your seeing him there?
A. I wanted to find out the truth of the transaction that he had in Washington with Mr. Brainard H. Warner, Mr. Louis D. Wine, and Mr. Louis Wine Richardson.
Q. How many times have you seen him since?
A. I cannot remember. I have seen him several times.
Q. So many that you cannot remember how many they were?
A. No.
Q. Tell us how many.
A. I really do not remember. I have seen him several times.
Q. When did you first see him after his conviction?
A. The first, I think, was some time in March or April, 1897.
Q. Who were with you?
A. The first time, an old friend, Mr. Smith E. Lane.
Q. Now, please tell us all that took place at that interview—all you said to him.
A. I said to Mr. Dutton—he said to me that he was very sorry that he had not given me back my property.
Q. I asked you to tell us what you said to Mr. Dutton, and not what Mr. Dutton said to you.
A. I could not possibly tell——

259 Mr. DARLINGTON: Your counsel insists that you can say whatever you please.
Mr. KEANE: I object to interrupting the witness.

By Mr. DARLINGTON:

Q. You understand, in answering these questions, that I am only asking you what you said to Mr. Dutton, and not what he said to you, and that if you persist in saying what he said to you you are volunteering matters and what is not asked about, and it comes under my objection and I shall move to exclude it.

Mr. KEANE: I object to Mr. Darlington's question on the ground that he should permit the witness to state the whole interview that transpired, and not try to shut out any part of it, and I also object to his interrupting the witness whenever she says anything that is unpalatable to him.
Mr. DARLINGTON: If I cannot get an answer to my questions without having the witness instructed by counsel to tell what is not asked for, and thus endeavor to get on the record an alleged statement of Dutton's, I will withdraw the question.
Mr. KEANE: The record shows that the witness has received no instruction from her counsel.
Mr. DARLINGTON: The question is withdrawn.

By Mr. DARLINGTON:

Q. When did you next see Mr. Dutton?
A. I saw him some time in May, I think.
Q. That was the second interview, was it?
A. Well, I really cannot tell exactly the date I was there. I saw him several times in the spring of 1897.
Q. Who was present at the interview?
A. Warden Sage, of the Sing Sing State prison.
Q. Anybody else?
A. Mr. Smith E. Lane.
Q. Any one else?
A. My brother.
Q. Will you please tell us all persons who were present without having to be interrogated to each one separately?
A. I think Mr. Keane was once with me in the fall of 1897.
Q. I am now asking of the persons at the second interview.
A. These were present at the second interview, I am sure—Warden Sage was present.
Q. Tell us all that were present at the first interview.
A. The first interview was in the presence of Warden Sage. I think Mr. Lane was present also, as he went with me.
Q. Were any other persons present at the first interview?
A. I don't think so.
Q. Can you tell us, as near as you can, when the second interview occurred and who were present then?
A. The second interview—Mr. Lane and Warden Sage.
Q. That occurred, as well as you can remember, about when?
A. I do not remember exactly. I think it was in April or March—I do not remember exactly—1897.
260 Q. When did your third interview with him occur and who were present?
A. Really I do not remember.
Q. Who were present at the third interview?
A. I really do not remember exactly who were present. Warden Sage was there most every time I saw Mr. Dutton.
Q. From what point did you go to reach Sing Sing?
A. New York.
Q. And you cannot remember who went with you?
A. I remember on several occasions Mr. Smith E. Lane went with me, and my brother and my mother at one time, but she never saw Mr. Dutton. She went with me; she did not see Mr. Dutton once.
Q. I am now asking you about the third interview?
A. But I do not remember. I cannot place them in the order. Whether the third, fourth, or fifth interviews I do not know.
Q. Can you state how many you had altogether?
A. No; several times, I think.
Q. How many times did you see him in the presence of Mr. Keane, your counsel?
A. I do not remember; it may have been twice.
Q. When was the last one?

A. About the fall of 1897.

Q. What inducement, if any, did you offer him to assist you in the litigation in New York city?

A. Offer him—give him what?

Q. Inducements?

A. I do not remember any inducements. I did not have any inducements to offer him.

Q. Did you do anything at all for him?

A. No.

Q. Give him any papers at any time at any of these interviews?

A. Well, let me see. I do not remember giving——

Q. Did you give him any papers of any kind at any of these interviews?

A. I do not remember giving him any papers; no.

Q. Did you make an affidavit for him in the State prison?

A. An affidavit?

A. Yes.

A. Let me see. I do not remember making an affidavit.

Q. Before a notary public, Mr. Hickey, along about October last?

A. An affidavit?

Q. Yes.

A. No. I must say I do not remember. I remember Mr. Dutton made an affidavit for me.

Q. Could you have made an affidavit for him and have forgotten it, do you think?

A. I must say I do not remember any affidavit. Are there any other words you can use?

Q. I mean a sworn statement made before a notary public.

A. Sworn statement? I do not remember of it at all.

Q. In regard to Mr. Czaki?

A. In regard to Mr. Czaki?

Q. Yes.

A. I remember Mr. Dutton made an affidavit of what occurred, or whatever it was, sworn-to statement.

Q. I am asking you about what you did.

A. I am trying to refresh my memory, Mr. Darlington. He made a statement of everything that occurred at the signing of the bond when my signature was obtained fraudulently on April 15th, 1896, by Mr. Czaki, and made in the presence of Mr. Czaki and at
261 Mr. Czaki's request, but I do not remember signing myself anything. I do not remember any affidavit.

Q. Do you think it is possible you would sign an affidavit in favor of a man whom you had succeeded in having convicted and having sent to the State's prison and you could have forgotten it?

A. I am sure it was not in favor of him. If it was anything at all, it was for myself—for the benefit of myself. I do not know.

Q. But you would not have made an affidavit and give it to Mr. Dutton?

A. I do not remember having made an affidavit at all. I remember about having an injunction on some papers that belonged to Mr.

Dutton, and I may have signed something in connection with that injunction, but as to an affidavit I cannot remember at all.

Q. Have you given us all that occurred at that interview with Mr. Richardson?

A. Yes, sir.

Q. I wish you would just state everything that occurred between you on that occasion.

Q. Well, we called his attention to the fact that he had sworn falsely to his answer to my bill in equity, and I also told him I regretted deeply that he, being such a very young man, should be made a tool of in the way he was in this suit, and I told him that I wanted to have my property and asked him to make restitution of it.

Q. Is that all?

A. That is all I remember.

Q. What did he say to you?

A. He said, "Well, I will think that over until tomorrow and let you know tomorrow."

Q. So that all that occurred was that you were telling him that you regretted that so young a man should have been made a tool of, and you wanted him to convey the property back to you, and that you would hear from him the next day?

A. Yes, sir.

Q. Did you say what would happen if he did not do it?

A. No; nothing at all.

Q. Did Mr. Keane take any part in this conversation?

A. Mr. Keane joined in and said that the answer was false, and that is all.

Q. Did Mr. Keane or yourself threaten Mr. Richardson with prosecution?

A. No; we did not.

Q. Was Mr. Keane living in Hyattsville at that time?

A. No; he was not.

Q. Living in Washington at that time?

A. No; I think he was living in New York.

Q. Do you know how he happened to be here at that time?

A. I cannot remember the reason he was in Washington at that time. He may have had some cases in the Supreme Court. I cannot remember why he was here in April.

Q. How did you happen to meet him here at that time?

A. As Mr. Keane was an old friend of ours, and as he was in Washington and we were in Washington, we would naturally see him.

Q. I am asking you how the thing actually happened.

A. At Hyattsville or at Washington?

Q. Washington.

A. I really do not remember. He was here in April at that time.

262 Q. Why did you come on to Washington yourself?

A. Well, I have been coming on for two years, I think.

Q. Why did you come here at that time? Did you have any purpose in doing it?

A. I had a purpose; probably my case.

Q. Is there any doubt about it that you came on for the purpose of seeing Mr. Richardson?

A. Of course, I did not come on principally to see Mr. Richardson.

Q. Just tell us why you came on.

A. I may have come at that time to see some friend, and I may have come also to look after this case. That is all.

Q. I am not asking you what you might have done. I am asking you what you did.

A. I cannot remember.

Q. Who came with you?

A. I do not know. Let me see, I was visiting Mrs. Peste, 2016 O street.

Q. Did not Mr. Keane come with you from New York on the same train—the same car?

A. He may have been on the same train.

Q. Did you see him travelling?

A. I do not really remember. I came so many times, Mr. Darlington.

Q. So often with Mr. Keane?

A. I have come with friends, with my mother, and with Mr. Keane and my mother, with and without Mr. Keane, and without my mother. I have come so many times I cannot place each visit exactly how it was.

Q. When did you first come to Washington with Mr. Keane?

A. I cannot remember. I came to Washington several times in a year and a half.

Q. With Mr. Keane?

A. With them, with my mother, and with Mr. Keane, and with friends.

—. Did you ever come to Washington with Mr. Keane before this present suit was brought?

A. I may have done so, but I do not remember.

Q. Now, on what occasion after the suit was brought did you first come from New York with him?

A. I do not really remember.

Q. How did you learn that Mr. Richardson held the title to this property for Warner and Company?

A. How did I know that?

Q. Yes.

A. I learned that from the office of Nash and Nash.

Q. Who were they?

A. A firm of lawyers.

Q. Did they say to you how they learned that?

A. I think they stated—this was after the conviction of Dutton, in December, 1896—I think they learned it through Mr. Wilcox—Mr. Wilcox, of the American Surety Company.

Q. Do you know Mr. Wilcox?

A. I do.
Q. Did he ever tell you that he was not the real party in interest?
A. Yes, sir.
Q. Did he tell you how he learned that?
A. From B. H. Warner, after the conviction of Dutton.
Q. About when was that?
A. The third week in December, 1896.

Q. Do you know how Mr. Wilcox came to get the com-
263 munication from Mr. Warner at that time?

A. Mr. Wilcox told me—this is what Mr. Wilcox told me, that he was in his office——

Q. That he was in Warner's office or Wilcox's office?

A. Mr. Wilcox was in his own office, the American Surety Co. of New York, and he said he saw Mr. Warner pass his door, and I think Mr. Warner came back and came into the office. He called Mr. Warner in to exchange the usual——

Q. Compliments of the day?

A. Yes, sir. He said, "Mr. Warner, you seem to be connected with this Dutton case. What is your connection with it? You seem to be in a serious fix. What is your connection with it?" and this is what Mr. Wilcox told me, and Mr. Warner said, "Why, you know Richardson has nothing to do with it. Richardson is simply a figure-head. I have really bought that property with Mr. Wine, and Richardson has nothing to do with it at all; it is simply in his name," and Mr. Wilcox said, "Why, you ought to have communicated that before. Why didn't you communicate it right away? Miss Godfrey is a friend of mine, and I know a great deal about this case, and I have seen them repeatedly during the trial, before and after. Now, why don't you see her lawyers. I will call them up on the telephone," and they called up Nash & Nash's office and Mr. Frank Ting Warburton. I think that is as far as I remember. Mr. Wilcox said that Mr. Warner was standing by his side, and that he wanted to see him and wanted to have a talk with him.

Mr. KEANE: This was over the telephone.

The WITNESS: Yes, sir; and Mr. Wilcox told me that Mr. Warburton would see him and at what time, and Mr. Warner said that he could not see him until six o'clock, at the Imperial hotel.

Q. And it was in that way you first learned Mr. Richardson was called a dummy?

A. That was after Richardson swore that he was the owner of the property and after the conviction.

Q. My question is this: Is this the first time you learned that Mr. Richardson was a dummy?

A. Yes, sir.
Q. Who was your counsel at that time?
A. At what time?
Q. The time that you say this Wilcox and Warburton interview took place.
A. Nash & Nash; Warburton had charge of it and Henry Wise Garnett in Washington.
Q. Where does Mr. Smith E. Lane live?

A. Somewhere in New York; his club is the Union Club. He generally gives his address at the Union Club.

Q. What does he do?

A. He is now the bridge commissioner—no, the commissioner of the eastern bridge. I do not know how to put that; he has been a lawyer.

Q. How long have you known him?

A. My family have known him for 25 years. He is a lawyer by profession.

Q. Can you explain, Miss Godfrey, why you sent the keys to B. H. Warner & Company by Mr. Dutton when Mr. Dutton was ready and present to take them, if you thought he was the owner?

A. I gave these keys to Mr. Dutton, and he sent them, and he told me that Warner & Company were his agents, and — had known B. H. Warner for years, and he transacted a great deal of business for him.

264 Mr. DARLINGTON: I call attention to this manifest attempt to put into the record which is plain-, as the witness knows, neither responsive or admissible, and call attention of the court to this evidence of good or ill faith, as the case may be, and move to exclude all the answer that is not responsive to my question.

Mr. KEANE: Mr. Darlington does not, evidently, like all the truth to come out.

Mr. DARLINGTON: I now call attention of the court to the attitude of counsel. We assume he must know what every law student knows, what Mr. Dutton said to this witness in the absence of the parties is not evidence and was not called for by me.

The WITNESS (continuing): I gave the keys to Stephen A. Dutton.

Q. Did you also give him a letter to B. H. Warner & Company and saying that you sent the keys to them?

A. He asked us to write a line enclosing the key, which I did, and he took the keys himself.

Q. And B. H. Warner & Company had written that the property had been purchased here by a client of theirs, and asked for the keys, and Dutton told you that it had not been purchased by B. H. Warner & Company or any one that he represented, and that he was only asking you to send a letter to B. H. Warner & Company——

A. Mr. Dutton said, "Just write a line and enclose the keys and I will take them," and he said he wanted to tear down the house himself.

Mr. KEANE: I now, at this stage, offer that letter in evidence, not filed with the examiner, to be marked Complainant's Exhibit No. 6, which is as follows:

Dictated by L. D. W.

Brainard H. Warner. Louis D. Wine.
Geo. W. F. Swartzell. Clarence B. Rheem.

B. H. Warner & Co., Washington, D. C.

APRIL 17TH, 1896.

Mrs. Mary A. Godfrey, 287 West 70th St., New York city, N. Y.

DEAR MADAM: A client of ours has recently purchased premises known as 1801 "Q" St. N. W., this city, from Mr. Dutton. We called on Gen'l Robertson, who has had charge of the property, for the keys this morning, and he informed us that he had, at your request, returned the same to you. We would be very much obliged to you if you would forward the same to us by mail or by express at our expense.

Very truly yours, B. H. WARNER & CO.

By Mr. DARLINGTON:

Q. Miss Godfrey, please look at this letter purporting to be signed by your mother, dated April 18, 1896, addressed to B. H. Warner & Company, and tell in whose handwriting it is.

A. My handwriting.

265 Q. You wrote that letter?

A. I wrote that letter, as I have done a great many for my mother.

Q. And you wrote it in answer to this letter of B. H. Warner & Company that your counsel has just filed, dated April 17th, 1896, addressed to your mother?

A. I wrote this at Mr. Dutton's suggestion, not particularly in answer to that letter.

Mr. DARLINGTON: I offer in evidence the letter to be marked Exhibit No. —, dated April 18th, 1896, addressed to B. H. Warner & Co., and signed by M. A. Godfrey. The said letter is as follows:

B. H. Warner & Co.

DEAR SIRS: Please find enclosed key to the house 1801 Q street N. W.

Yours very truly, M. A. GODFREY,
287 *W. 70th Street, Corner West End Ave., New York.*

April 18th, '96.

* * * * * * *

By Mr. DARLINGTON:

Q. Did you ever see Mr. Czaki after this interview in April, at which he served a subpœna on you?

A. Yes; I think so.

Q. When, where, and how often?

A. I could not tell you how often, I am sure.

Q. Did you have more than one interview with him after that?

A. I saw him in the fall of 1896.

Q. How many interviews have you had with him since April, 1896?

A. Interviews, I don't know how you mean. You mean special interviews with him? I don't know that I had any.

Q. Miss Godfrey, don't you know what "interviews" means?

A. I don't understand in connection with Mr. Czaki.

Q. Did you have an interview after the one of April, 1896, when he served you with a subpœna? I mean by that, did you meet him anywhere and have a conversation with him?

A. Yes, sir.

Q. How often?

A. I could not tell.

Q. More than once?

A. Yes, sir.

Q. Tell us where next you met him after April.

A. I saw him at the time Dutton was being tried, much against my will.

Q. Where?

A. I saw him, with many expressions of disapproval, in the office of Mr. Osborne.

Q. Did you have any conversation with him?

A. Unfortunately I was obliged to.

Q. When did you next see him after that?

A. I saw him during the trial of Stephen A. Dutton.

Q. Did you ever see him at the office of Mr. Keane?

A. Yes; I think I did; yes, sir.

Q. When was that?

A. I don't remember exactly.

Q. How did that come about?

A. Well, I was calling on Mr. Keane, and I think Mr. Czaki came in; I am not sure. Mr. Czaki came—no, I think——

266 Q. Wasn't Mr. Czaki there, and didn't you and your mother come in?

A. I don't really remember which it was.

Q. Was this before or after the conviction of Mr. Dutton?

A. After—long after.

Q. Were you still reluctant to converse with him then?

A. As I considered Mr. Frederick M. Czaki just as much of a swindler and as bad as Stephen A. Dutton, I never wished to converse with him.

Q. Did you converse with him in Mr. Keane's office?

A. I may have asked him a few questions.

Q. Do you know whether you did or not?

A. Yes; I think I did.

Q. Was there any suspicion about that?

A. I think it was for my own gratification to know what he would say.

Q. Mr. Czaki started to leave the room when you and your mother entered?

A. I think we were there when Mr. Czaki entered. I do not remember which came in first.

Q. Did you ask him not to leave, that you had met him at Dutton's trial and you would like to talk to him?

A. I do not remember, I am sure. I remember he said——

Q. Did you also tell him that you had seen Dutton up at Sing Sing and he had given you back the house?

A. I may have told him that. Mr. Stephen A. Dutton deeded to me all his right, title, and interest at the corner of Q and New Hampshire avenue, 1706 Connecticut avenue; that he had not sold the property to B. H. Warner and Mr. Wine.

Q. When did you last see Mr. Czaki?

A. I think I saw Mr. Czaki—I do not remember, really.

Q. Do you think you had an interview with him since in Mr. Keane's office?

A. No; I don't think so.

Q. Now, was this interview at Mr. Keane's office before or after your interview with Richardson at Hyattsville?

A. I do not remember.

Q. Wasn't it before?

A. I think it was after.

Q When was your interview with Mr. Richardson?

A. I said the latter part of April, 1897; I don't remember the date exactly.

Q. At this interview with Mr. Czaki at Mr. Keane's office, did you not put a number of questions to Mr. Czaki at the interview and didn't Mr. Keane take part with you in putting these questions and invite answers to them by Mr. Czaki?

A. I remember some questions asked him.

Q. Had Mr. Keane at that time any professional relation in the case?

A. Mr. Keane did not come—not professionally related to this case in any way until about the first of June; it may have been the latter part of May.

Q. That was after the Czaki interview?

A. I do not remember when each interview was.

Q. If Mr. Keane had no professional relation to you or your case at the time of the Czaki interview, can you explain why you and he took the part you there did interrogating Mr. Czaki about this transaction and seeking answers from him?

A. Mr. Keane—when I first found out that I was swindled
267 by Stephen A. Dutton, Mr. Keane was very kind and offered his services as a friend, and he continued these services as a friend entirely until I asked him myself to come in professionally about the latter part of May or the first part of June.

Q. What did he do as a friend as distinguished from professional services?

A. As a friend he did not charge me anything, and when he comes professionally in the case he charges me, of course.

Q. So the distinction you take between professionally and any other connection is that when professionally you began to pay him?

A. Certainly.

LILY ALYS GODFREY.

Subscribed and affirmed before me this 14th day of April, A. D. 1898.

F. WALTER BRANDENBURG,
Examiner — Chancery.

The examiner notes that Miss Godfrey has signed, at her request and at the request of her counsel, the foregoing deposition as recorded by the examiner, and desires to have the examiner note the following, which the examiner accordingly notes, and before the changes are signed will submit the same to counsel for the defendant:

Miss Godfrey desires to change the word "without," on the 15th line of page 180, to the word "with;" she desires to insert the word "not," in the first line on page 184, so that the said first line will read, "Well, my house—that is, it was not mine then;" she desires to strike out the word "he," on the 15th line on page 193, so that said line as correct shall read as follows, "these papers and said, 'I want you to be a witness,'" and to change the last sentence of the first paragraph, line 24, page 193, so that the same shall read, "I give him the paper and have never seen it since;" and change the answer comprising lines 15 and 16, on page 199, so that the last sentence thereof shall read, "I remember the Washington property, the corner was $55,000, and the house, 1706 Connecticut avenue, $22,000;" also by adding at the end of the answer on page 212 the words, "2016 O street;" the answer, line 8, page 224, she desires it changed so as to read as follows: "A. I may have told him that. Mr. Stephen A. Dutton deeded to me all his right, title, and interest at the corner of Q and New Hampshire avenue and 1706 Connecticut avenue; that he had not sold the property to B. H. Warner and Mr. Wine;" she also desires to strike out word "we," in the 16th line on page 173, so that the same shall read, "company was on the top floor and took the elevator;" the witness also desires to change the answer beginning on the fifth line from the bottom on page 183 of the record, so that the same, as correct, shall read, "In connection with my mother we sold, bought, and exchanged in connection with an estate;" also on the 11th line on page 216 insert the word "known" of the record so that the same, as correct, shall read, "had known B. H. Warner for years."

Mr. Keane, solicitor for the complainant, desires the examiner to note that although the record does not show that the letter found on page 217 of the record which was offered in evidence at this stage of the examination had been in fact offered in evidence at the time the letter was exhibited to witness on page 168. 268–273

LILY ALYS GODFREY.

Subscribed and affirmed to before me this 16th day of April, A. D. 1898.

F. WALTER BRANDENBURG, JR.,
Examiner in Chancery.

* * * * * * *

274 T. CONRAD DODGE, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. KEANE:

Q. Mr. Dodge, where do you reside?
A. Bethesda, Maryland.
Q. What is your occupation?
A. Real-estate clerk.
Q. What is your age?
A. Twenty-five.
Q. How long have you been in the real-estate business?
A. Since July 16th, 1890.
Q. With what firm are you connected?
A. B. H. Warner & Company.
Q. How long have you been connected with B. H. Warner & Company?
A. Since July 16th, 1890.
Q. Do you know the defendant Stephen A. Dutton?
A. I do not.
275 Q. Did you ever see the defendant Stephen A. Dutton?
A. I have.
Q. When did you first see Stephen A. Dutton?
A. In November, 1896.
Q. Whereabouts did you see Stephen A. Dutton?
A. In New York city.
Q. At what place in New York city?
A. In the court. I think it was the court in general sessions. I am not positive, but it was a court in New York.
Q. Was it at the trial of Stephen A. Dutton in which he was convicted of having defrauded the complainant in this case?
A. It was the City of New York against Dutton.
Q. The people of the State against Dutton. Did you attend that trial as a witness?
A. No.
Q. Did you give any testimony at that trial?
A. Yes.
Q. You were a witness, then, in that trial, were you not?
A. To a certain extent.
Q. Were you or were you not a witness there?
A. To a certain extent.
Q. Were you or were you not a witness?
A. I gave evidence there. I identified signatures and valued the property.
Q. Were you or were you not a witness?
A. To a certain extent; yes.
Q. Do you mean you were a witness?
A. To a certain extent.
Q. What do you mean by "to a certain extent"?
A. I went on there to carry the papers on for the district attorney.

Q. You gave testimony, did you not?
A. He put me on the stand after I went there.
Q. Then you were a witness, were you not?
A. I received no compensation at all for going on.
Q. Do you deny that you were a witness at that trial?
A. The State of New York paid all expenses. I received no compensation whatever.
Q. Were you a witness or not?
A. To a certain extent; yes.
Q. What do you mean by "to a certain extent"?
A. I identified the signatures on the papers, and I gave testimony—that is, I valued the property.
Q. Then you were a witness, were you not?
A. To a certain extent; yes.
Q. Will you please explain what you mean by "to a certain extent"?
A. I did not go on to testify as a witness. I simply went on to carry these papers, and after I went there the district attorney put me on the stand.
Q. Did you testify?
A. To a certain extent.
Q. What objection have you to testifying that you were a witness in that trial?
A. None in the world.
Q. You know you were a witness, do you not?
A. To a certain extent; yes. I was not called there as a witness at all.
Q. What do you mean by "to a certain extent"?
A. I did not go on there as a witness. I went on to carry these papers, and I was put on the stand after I went there.
276 Q. And gave testimony?
A. Yes.
Q. That made you a witness, did it not?
A. I only identified the signatures.
Q. A person who gives testimony in a trial is a witness, is he not?
A. Oh, yes.
Q. Did you not give testimony in the trial?
A. Yes.
Q. Then you were a witness, were you not?
A. To a certain extent; yes.
Q. You are unwilling to testify that you were a witness, except to a certain extent?
A. Yes.
Q. Is that so?
A. I was a witness to a certain extent.
Q. Will you explain the difference that exists in your mind between being a witness and being a witness to a certain extent?

Mr. DARLINGTON: I have not objected to this colloquy between counsel and his own witness; but I submit that a play on words be-

tween the counsel and the witness is not important to the trial of the case, and scarcely called for on the part of either of them.

Mr. KEANE: I think that the testimony is very valuable as showing the disposition of the witness and his attitude.

The question was repeated, as follows:

Q. Will you explain the difference that exists in your mind between being a witness and being a witness to a certain extent?

A. If I had been a witness I think they would have summoned me, but as I was not, I was only a witness to a certain extent. I was not subpœnaed or called at all.

Q. What member of the firm of B. H. Warner & Company first spoke to you about going to New York in that matter? Note the pause, please, Mr. Examiner.

A. I think it was Mr. Wine.

Q. Mr. Louis D. Wine?

A. Yes.

Q. How long before you went there was it that he spoke to you about it?

A. About 4 o'clock. I left on the 12 o'clock train at night.

Q. Did any one else besides Mr. Wine speak to you on the subject of going to New York to attend that trial?

A. I think not.

Q. No one else?

A. I think not.

Q. Where was it that Mr. Wine held this conversation with you?

A. At the office of B. H. Warner & Company.

Q. Who were present at the time?

A. I do not remember.

Q. Do you remember whether any one else was present besides yourself and Mr. Wine?

A. I could not swear to it.

Q. What is the best of your recollection on the subject?

A. Lots of people come in and go out of the office all the time. I don't remember.

Q. Do you recollect this question being asked you as a witness: "Your place of business is Washington city?" and that you answered, "Yes, sir"?

A. I think I did.

Q. Do you remember that this question was asked you: "With what firm are you engaged in Washington?" and that you answered, "B. H. Warner & Company"?

A. I think so.

277 Q. Do you recollect that this question was asked you: "Warner & Company are real-estate brokers?" and that you answered, "Yes, sir"?

A. Yes.

Q. Do you recollect this question was asked you: "Do they represent a man in Maryland by the name of Richardson?" and that you answered, "They do"?

A. Yes.

Q. Do you recollect this question was asked you: "And do you know this man Richardson?" and that you answered, "I do"?

A. I did.

Q. Do you recollect that this question was asked you: "What are his initials?" and that you answered, "Louis W."?

A. I did.

Q. Do you recollect this question was asked you: "Have you got some papers that you brought on here from Washington for me?" and you answered, "Yes, sir"?

Mr. DARLINGTON: I object to this line of examination. The only competent way to interrogate this witness is to put questions to him and to take his answers, not to read to him his answers to questions propounded at the trial in New York, to which the defendants are not parties, and I shall object to the reading in evidence of any further answers of this witness in this way as being improper.

By Mr. KEANE:

Q. Go right ahead and testify. The objection is simply made on the record.

A. I think I answered that question. I said I did.

Q. Will you state what papers they were that you produced?

A. A check of B. H. Warner & Company.

Q. For what amount?

A. I think it was for seventy-eight hundred and some odd dollars.

Q. Was it $7,086.33?

A. I don't remember the amount. It was a check of B. H. Warner & Company, four checks of the Title Insurance Company, an agreement signed by Dutton and Richardson, a tax certificate signed by the assessors, and the Columbia Title Insurance Company certificate of title.

Q. Do you remember that this question was asked you: "I show you a paper which is marked 'People's Exhibit 1 for Identification,' being the contract of sale of April 10th, 1896, and ask you to look at the bottom of this paper and see if you see upon it the signature of any person which you recognize and whose handwriting you know; answer yes or no;" and that you answered, "Yes, sir"?

A. I did.

Q. Do you recollect that this question was asked you: "Which is the signature you recognize?" and you answered, "L. W. Richardson"?

A. I did.

Q. Do you recollect that this question was asked you: "Do you recognize that as the signature of Mr. Richardson?" and you answered, "I do"?

A. I did.

Q. Do you recollect this question was asked you: "Have you seen him write?" and you answered, "I have"?

A. I did.

278 Q. Do you recollect that this question was asked you: "There is another signature upon that paper, which purports

to be that of Stephen A. Dutton; did you ever see him write?" and you answered, "I have not"?

A. That is what I said.

Q. Do you recollect this question was asked you: "Where did you get this paper marked 'People's Exhibit 1 for Identification,' being the deed to the property by Stephen A. Dutton?" and you answered, "In the office of B. H. Warner & Company"?

A. I think that was the contract you just mentioned, not the deed.

A. That is correct; you recollect that?

A. I recollect the contract; yes.

Q. And you answered, "In the office of B. H. Warner & Company"?

A. I did.

Q. Do you recollect that this question was asked you: "They are the brokers and agents of L. W. Richardson?" and you answered, "They are"?

A. I did.

Q. Do you recollect that this question was asked you: "I show you a paper which is marked 'People's Exhibit 2 for Identification,' being the deed of April 13, 1896, from Dutton to Richardson, and I ask you where you got 'People's Exhibit 2 for Identification'" and you answered, "From the office of B. H. Warner & Company"?

A. Yes.

Mr. DARLINGTON: If the object of these questions and answers is to obtain testimony as to the circumstances there recited, I make the further objection that what this witness may have said in a trial in New York is not evidence as against these defendants, and I shall move to exclude the testimony on that ground as well as the ground heretofore stated.

Mr. KEANE: Counsel for complainant states that the object of this testimony is to show exactly what was testified to at that trial, and nothing else.

Mr. DARLINGTON: Then I stand on both objections—that the manner of getting the information sought is incompetent and improper, and that the matter elicited is in like manner incompetent and inadmissible.

Mr. KEANE: Do you recollect that this question was asked you: "Are they the agents for this man Richardson that you have mentioned?" and you answered, "Yes; they are"?

A. I think so.

Q. Do you recollect that this question was asked you: "And is that paper held by them for Richardson?" and you answered, "It is"?

A. Yes, sir.

Q. Do you recollect that this question was asked you: "I show you another paper, which is marked 'People's Exhibit 3 for Identification,' being the check of B. H. Warner & Company for $7,086.33, and I ask you where you got that paper," and you answered, "Office of B. H. Warner & Company"?

A. Yes.

Q. Do you recollect that this question was asked you:
279 "Whose signature is appended to that?" and you answered, "The signature of B. H. Warner & Company"?

A. Yes.

Q. Do you recollect that this question was asked you: "And do you know to whom that check was delivered?" and you answered, "Yes, sir"?

A. Yes.

Q. Do you recollect that this question was asked you: "And to whom?" and you answered, "I presented it myself to the Columbia Title Insurance Company"?

A. That is correct.

Q. Do you recollect this question was asked you: "In Washington city?" and you answered, "Yes"?

A. Yes.

Q. Do you recollect that this question was asked you: "In whose behalf were your firm acting when that check was drawn?" and you answered, "L. W. Richardson"?

A. Yes, sir.

Q. Do you recollect this question was asked you: "And did you pay that check to the Columbia Title Insurance Company in behalf of Richardson?" and you answered, "I did"?

A. Yes.

Q. Do you recollect this question was asked you: "The amount of that check is $7,086.33, and I ask you if that check was delivered as the purchase price by your firm. For what purpose did you deliver it?" and you answered, "To pay the equity in cash on the property, lots 1, 2, 3, and 66, in square 134"?

A. I did.

Q. Do you recollect that this question was asked you: "Are you familiar with the values of Washington City property?" and you answered, "I think so"?

A. Yes.

Q. Do you remember whether this question was asked you: "Do you know the value of that property mentioned and described in People's Exhibit No. 2?" and you answered, "I should think it would be worth about $35,000"?

A. I did.

Mr. DARLINGTON: I object to this matter on the ground that value is not to be proved in that way.

By Mr. KEANE:

Q. Do you recollect this question was asked you: "Do you know that to be its value?" and you answered, "I would swear to that from my own judgment"?

A. Yes.

Mr. DARLINGTON: I object on the further ground that the witness is not shown to be an expert in values.

By Mr. KEANE:

Q. I ask you whether such testimony as I have read to you was given at the time by you from your personal knowledge.

A. It was.

Q. State when you first acquired knowledge of the transaction relating to the alleged sale of lots 1, 2, 3, and 66, square 134, Washington, D. C., of the 13th of April, 1896.

A. When I carried the check to the Columbia Title Insurance Company.

Q. Was all of your knowledge derived from the carrying of those checks to the Columbia Title Insurance Company?

A. From that and the books of B. H. Warner & Company.

280 Q. Did you ever have any conversation or hear any conversation on the subject of that alleged sale by any one?

A. Since; yes.

Q. State the names of all the persons whom you heard converse upon that subject at or about that time.

A. I didn't say that time; I say since. Since this case has come up, I have heard a good many.

Q. At or about the time that you carried those checks to the Columbia Title Insurance Company had you heard any conversation relating to the said matter on the part of Mr. Wine or Mr. Warner?

A. I was simply a clerk in B. H. Warner & Company's office, and my instructions were to carry the check to the Columbia Title Insurance Company.

Q. Who gave you those instructions?

A. The office of B. H. Warner & Company.

Q. Who gave you those instructions?

A. I don't remember who gave them to me, because I am under the jurisdiction of all three—Mr. Wine, Mr. Rheam, and Mr. Warner.

Q. Were the instructions given to you by one of those three gentlemen?

A. In all probability, yes.

Q. Is your mind a total blank as to which of those three gave you the instructions?

A. It is.

Q. You have not the faintest idea which of the three it was who gave you the instructions?

A. I have not.

Q. Please state what instructions they gave you.

A. Simply to take a check to the Columbia Title Insurance Company and close up the sale.

Q. What knowledge did you derive from the books of B. H. Warner & Company in regard to that transaction?

A. Just from the drawing of the checks and things going on around the office as usual—looking over books.

Q. What was exactly your knowledge in regard to that transaction?

A. Only hearsay.

Q. It was only hearsay?

A. Yes.

Q. Did you not just say that you had testified in the trial of Stephen A. Dutton in November, 1896, from your personal knowledge?

A. Yes; I testified to the signatures.

Q. I asked you whether the testimony which you gave at the trial of Stephen A. Dutton, which I read to you, was of your own personal knowledge, and you testified it was.

A. I did.

Q. Was that statement true or false?

A. True.

Q. When, then, do you mean now by saying that it was only hearsay?

A. I mean the latter. That had nothing to do with the sale of the property. I testified to the signatures.

Q. I ask you now to state all of your knowledge on the subject of the relation of Louis W. Richardson to the alleged purchase of lots 1, 2, 3, and 66, square 134, Washington, of the alleged date of April 13, 1896. Do you understand the question?

A. Yes. I have since learned that the property was bought by Mr. B. H. Warner and Mr. Louis D. Wine, and Mr. Richardson was simply used as a matter of convenience.

281 Q. You say you have since learned that?

A. Yes, sir.

Q. Then what you call your personal knowledge, as exhibited by the testimony given by you at the trial of Stephen A. Dutton in November, 1896, you now admit was false?

A. No, sir.

Q. If you have now learned the truth to be that Louis W. Richardson was only a dummy, and not the real purchaser, how do you reconcile that with your testimony that I have read to you as given by you of your personal knowledge in November, 1896, at the trial of Stephen A. Dutton?

A. In the first place, a clerk is not always supposed to know the business of the members of the firm, whether they buy property, and any man who buys property in the office is supposed to be our client at that time. We are his agents.

Q. Will you try to answer my question? I will have it repeated.

The question was repeated as follows:

Q. If you have now learned the truth to be that Louis W. Richardson was only a dummy and not the real purchaser, how do you reconcile that with your testimony that I have read to you as given by you of your personal knowledge in November, 1896, at the trial of Stephen A. Dutton?

A. The testimony at the trial of Stephen A. Dutton had nothing to do with that. I was up there for the State of New York to identify the signatures; I was simply called to identify Mr. Richardson's signature; nothing else that concerned him.

Q. Did you not understand the testimony that I just read to you

that was given by you at the trial of Stephen A. Dutton in November, 1896?

A. Yes; but I do not see where it has any connection with this case to amount to anything.

Q. You do not see that that testimony committed you to stating that the purchaser of that property, lots 1, 2, 3, and 66, square 134, was Louis W. Richardson, and that B. H. Warner & Company were acting as his agents?

A. When B. H. Warner & Company make a sale they are always agents for the purchaser.

The question was repeated as follows:

Q. You do not see that that testimony committed you to stating that the purchaser of that property, lots 1, 2, 3, and 66, square 134, was Louis W. Richardson, and that B. H. Warner & Company were acting as his agents?

A. He was the purchaser there.

Q. You n-w state that, although at that trial, solemnly under oath, you testified he was the purchaser of your own knowledge, you have since learned that he was only a dummy and that B. H. Warner and Louis D. Wine were the purchasers?

A. Yes, sir.

Mr. DARLINGTON: Let it be understood that my objection applies to the whole of this examination of this matter and to all that follows of a similar character. I shall move to exclude the whole of it on the grounds I have stated.

282 By Mr. KEANE:

Q. Will you state to us when it was that you first learned that Louis W. Richardson was only a dummy and that B. H. Warner and Louis D. Wine were the real purchasers?

A. I don't remember.

Q. Will you try to state to the best of your recollection when you first learned that?

A. I wouldn't like to say.

Q. Will you kindly state who it was that first gave you that information?

A. I don't remember.

Q. Will you state where you received that information?

A. I presume at the office of B. H. Warner & Company.

Q. Will you state who were present when you received it?

A. I cannot.

Cross-examination.

By Mr. DARLINGTON:

Q. Mr. Dodge, you say that you never saw Stephen A. Dutton until November, 1896?

A. Yes, sir.

Q. Had you ever seen any other member of the Dutton family in Washington up to that time?
A. I had not.
Q. Do you know Allan A. Dutton, his brother?
A. I do not.
Q. Did you ever see him?
A. I have.
Q. When?
A. Here testifying one day.
Q. Was that the first time you ever saw him?
A. That is the first time I ever saw him.
Q. Did you ever see him in the office prior to that time?
A. I had not.
Q. You say you were sent on to carry the papers you have described to the city of New York?
A. I was.
Q. Were you told why those papers were *am* wanted there?
A. I was.
Q. Why?
A. In the case of the People of New York *versus* Stephen A. Dutton.
Q. To aid in the conviction of Dutton?
A. Yes, sir.
Q. You were sent on by Mr. Wine?
A. I was sent on by Mr. Wine.
Q. Have you told us what your business is in the office of Warner & Company?
A. I was sales clerk at the time.
Q. What is that?
A. I had charge of the property coming in the office, posting it on the books, and everything done on the sales side, mailing letters, &c.
Q. Just what are your duties?
A. Posting property.
Q. What do you mean by "posting"?
A. Entering the property on the books for sale, copying letters and sending them out, making bank deposits, attending to orders for the title company, and everything in general on the sales side.
Q. That is, when properties are brought into your office to be sold you enter that property on a book?
A. As a rule I do.
283 Q. Your other duties consist of going to the bank to make deposits, going to the title company to leave orders about examinations to title, and things of that description?
A. Yes, sir.

T. CONRAD DODGE.

Subscribed and sworn to before me this 19th day of April, 1898.

JOHN W. HULSE,
Examiner in Chancery.

CHARLES J. BELL, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. KEANE:

Q. Mr. Bell, you are president of the American Security and Trust Company?
A. I am.
Q. You are familiar with the values of real estate in Washington?
A. Yes.
Q. How long have you been so familiar with the values of real estate?
A. That is a difficult question to answer.
Q. About how long?
A. About ten years.
Q. As president of the American Security and Trust Company, you make loans upon real estate?
A. I do.
Q. Is it necessary as part of your equipment for such office——

Mr. DARLINGTON: Objected to as being too leading.
Mr. KEANE: You need not interrupt me, Mr. Darlington. You can state your objection in a proper way.

By Mr. KEANE:

Q. And it is necessary, as part of your equipment in such office, to have knowledge of the values of real estate in Washington?
A. It is.
Q. Are you acquainted with the property known as lots 1, 2, 3, and 66, square 134, being the northwest corner of New Hampshire avenue and Q street?
A. Yes; I am.
Q. You have examined that property?
A. I have looked at it.
Q. I will ask you what you would consider was a fair value of that property in the month of April, 1896. How much a square foot would you say was a fair value of that property in the month of April, 1896?
A. I should state the value at $6 a square foot, provided it was not a forced sale.
Q. What would you say was the value of that property at the present time?
A. I do not think there has been any change one way or the other in property situated in the northwest section, which commands a high price on account of location. The fall in the value of real estate has been more in the suburbs and the northeast section and certain interior streets; but I should not say there had been much change in the value of that lot or those lots, but I treat it as one lot. If you are to take the different lots and divide them up I should put a very much lower valuation on them.

284 Q. Will you state whether, in forming an opinion of the value of those lots, the character of the surround- and the improvements in the immediate vicinity has any weight?

A. Undoubtedly.

Q. Would you state what is the character of the improvements in that vicinity and the surroundings?

A. On one corner is Lieut. Clover's house—a very handsome stone house. On another corner is the Chinese embassy—a handsome house. My recollection is that Mr. Van Wyck's house—I think it is Van Wyck's house, is it not?

Q. Yes, sir; that is correct.

A. That is opposite.

Q. Is the Whittemore house in that vicinity?

A. Yes; the Whittemore house. There are a number of other houses in that vicinity. If you take a circle you would find quite a number of handsome houses.

Q. State whether this corner is the only remaining unimproved corner in that plaza there at the junction of New Hampshire avenue, Q, and 18th streets.

A. It is.

Q. State whether or not the fact that the corner is a northwest corner would have any influence, in your opinion.

A. It would.

Q. State whether or not a northwest corner is considered a better corner than any other corner.

A. I should say, generally, yes. I do not know that I personally would so consider it.

Cross-examination.

By Mr. DARLINGTON:

Q. Mr. Bell, I assume that you took into consideration all these various details about which you have been interrogated in forming your estimate, did you not?

A. I beg your pardon.

Q. I say, I assume you took into consideration all these various details about which you have been interrogated in making your estimate of the value of this property, did you not?

A. Yes; in a general way.

Q. Are you pretty familiar with that locality?

A. Yes.

Q. How far north of this particular corner is the next vacant ground on the market as indicated by the sign-boards?

A. I could not answer that.

Q. Do you remember a triangular piece north of it less than half a square distant?

A. Yes.

Q. Is it a fact that property on New Hampshire avenue is a quick sale?

A. No; no property is a quick sale.

Q. Do you know how much property along that avenue is in the market and has been for a good while without purchasers?

A. Going north of that, a good deal of it.

Q. Many northwest corners?

A. I could tell you a good deal better if I had a map; I should say there were several north of that.

Q. Is it not a fact that from Q street clear out to the Boundary there are but two improved northwest corners on New Hampshire avenue?

A. That I could not say.

285 Q. Namely, the Page house and the Concord flats?

A. Yes; the Concord flats, on the corner of New Hampshire avenue and S street.

Q. Yes; and the Page house, at the corner of New Hampshire avenue and R street. Do you recall any other improved northwest corners on that avenue north of Q street?

A. I do not.

Q. Your estimate of $6 is accompanied with a proviso that it is not a forced sale?

A. Undoubtedly.

Q. Within how long a period of time do you think that property could be sold at that figure or could have been in April, 1896?

A. With a lot of that description it is simply when you find a purchaser who wants a corner lot.

Q. That may be a matter of years, may it not?

A. I should hardly say a matter of years; it may be some time.

Q. If it be true that this particular lot was in the hands of very many real-estate agents for some five or six years prior to April, 1896, not receiving a single offer except in exchange for equities, would that have any influence upon your judgment as to whether it would be likely to sell at the figure you state?

Mr. KEANE: Objected to on the ground that there is no positive proof whatever of any of the elements which enter into the hypothetical question propounded by counsel for the defendant, and on the further ground that the price at which the property stood upon the books of any broker was $55,000.

A. I would have to answer that question by asking a question: At what price? It might be in the hands of real-estate agents at $10 a foot or at $4 a foot.

Q. The case I am putting is where it was in the hands of real-estate agents for sale without any cash offers being made for it.

Mr. KEANE: That is objected to on the ground that there is nothing in the testimony to give support to such a hypothetical question.

A. I should say in answer to that if it were in the hands of agents to accept any cash offer which was made, my judgment of values in that neighborhood would be very much shaken.

Q. You are aware of the fact, are you not, that where property is

in the hands of real-estate agents for sale, even at an excessive price, it is their custom to submit offers when they receive them?

A. I am.

Q. My question is, assuming that this property was in the hands of real-estate agents who were repeatedly urged to sell at from $50,000 to $55,000 for the entire tract, and that no cash offers were received.

A. How much is that per foot?

Mr. KEANE: $8.65. The testimony shows the reverse of what the question assumes.

Mr. DARLINGTON: I submit that there is no occasion here for arguments by counsel over the competency of the question. The objection has been made.

286 The WITNESS: That being $8.50 a foot and the agents being instructed not to sell at less than that, I should say it proves nothing in regard to the value of the lot. If, on the other hand, that was given as an asking price, with instructions to the agents to report bids of $5 or $6 a foot, I should say it had.

Q. Is it your understanding that agents require instructions to submit lower offers than the asking price?

A. Not generally.

Q. Is not generally their practice the contrary, to submit any offers they get, whether or not they get a price offered which is up to the limit at which the property is placed in their hands?

A. I think generally the agent judges by the customer and generally has instructions from his customer to ask so much a foot, and if an offer comes near that to either accept it or notify him.

Q. The price of $6 per square foot is the price at which you think it might be sold to some person who desired it for his own use, is it not?

A. Yes.

Q. Not persons who desired it for speculative purposes—to sell again?

A. No.

Q. Is it not a fact that the liability of property of this description to remain a long time unsold and its liability to have interest, taxes, and the like accumulate are elements which tend to diminish the price of property very much when bought simply for the purpose of selling again?

A. Yes.

Q. As a matter of fact, was not the spring and summer of 1896 a time at which it was exceptionally hard to sell property here, that being, if you recall, the eve of the Presidential election, when an important change in the currency was about to be decided?

Mr. KEANE: I want to note on the record that the summer of 1896 has nothing to do with this matter, as the alleged sale is admitted to have been made on the 13th of April, 1896.

A. There has been little or no speculative dealing in property in the city of Washington from 1894 to the present day.

Q. But my present question is whether the universally known fact that the Presidential campaign of 1896 was to be fought upon this question of the currency did not materially affect the possibility of business transactions while that matter was pending, and deter many persons from making investments who otherwise might have done so.

A. No more than any other period since that, in my opinion. It did undoubtedly have its influence, but it was all the outcome of the panic of 1893.

Q. You do not think that the settlement of the financial question by the election of 1896 had a tendency to restore confidence or to establish the stability of values?

A. It undoubtedly stopped all speculative purchases. I separate the two, the speculative purchases and the legitimate purchases of property of that kind.

Q. What is it you say stopped speculative purchasing?

A. The panic of 1893.

Q. I am talking about the campaign of 1896.

287 A. The panic of 1893 did not begin to affect real estate until practically 1894, and it has steadily affected it from that time on.

Q. I am afraid that I have not made my question clear. The question is whether the settlement of this question of free silver or a gold basis did not particularly deter persons from making investments in 1896 until that question was settled?

A. Yes.

Q. You spoke of your position being one that required you to be familiar with real-estate values?

A. Yes.

Q. Does your company make loans upon its president's estimate of values or have you a valuing committee?

A. We have a valuing committee. The loans come first to me, and if I consider there is sufficient merit in them I then send them over to a valuation committee to make a thorough examination. They then come back to me for approval, and are passed upon by the executive committee.

Redirect examination.

By Mr. KEANE:

Q. I will ask you, Mr. Bell, if you are familiar with the property on the northwest corner of New Hampshire avenue and R street, occupied by the dwelling of Thomas Nelson Page.

A. I am.

Q. I ask you whether you would consider that property as valuable as the property on the northwest corner of New Hampshire avenue and Q street.

A. I would have to see exactly the frontage and number of feet and depth.

Q. I speak more particularly, if you please, in regard to the locality. Would you consider the locality as good, taking into

consideration the improvements which surround the corner of New Hampshire avenue and Q street and its proximity to Dupont circle; how would you consider that those corners compare with each other in value?

A. On general principle, without knowing the number of feet in the lot, I should say the nearer you were to Dupont circle the greater the value; but, not knowing the dimensions of the Page lot, I could not say.

Q. I talked, of course, of the square feet, independently——

A. The square foot depends on the depth of the lot. A lot 150 feet deep is very much less valuable than a lot 150 feet deep, and then whether there was an alley in the rear or not.

Q. In other words, you have not examined the property of Thomas Nelson Page and are unable to answer my question?

A. I am.

Q. I ask you whether you know the percentage of valuation at which loans are made, as a general rule, in Washington.

Mr. DARLINGTON: I object to that as immaterial and irrelevant to any issue in this cause.

A. Loans made by who?

288 Q. On what percentage of the valuation of property are loans made in the business of loaning in Washington by people engaged in that business?

Mr. DARLINGTON: I object to that question. The witness has not yet been asked whether he is familiar with general customs of that kind.

A. I would not undertake to answer that question farther than the people who make loans with whom I am familiar.

Q. What is the margin usually required, according to your knowledge?

Mr. DARLINGTON: I object unless the witness is first qualified by proper questions as to his ability to give an answer to the question.

Q. On what margin of the valuation?

A. I can only answer that question by stating what we, as a corporation, do in making loans.

Q. What is that?

Mr. DARLINGTON: I make the same objection.

A. To loan not exceeding 60 per cent.

Recross-examination.

By Mr. DARLINGTON:

Q. Do you find that at all times a safe margin when resting simply upon estimates?

A. I do not.

Q. You sometimes find that the estimates made by your valuing committee and approved by your board are too high, do you not—

that the property does not bring even the amount you loaned upon it?

A. Yes.

Q. What is the nearest sale to this property mentioned that you have any recent knowledge of?

A. You mean of similar property?

Q. I mean of property on New Hampshire avenue near this property.

A. Unimproved?

Q. Yes, sir.

A. I don't know of any that I can recall.

Q. Do you know of a sale made by Fitch, Fox & Brown to David S. Hendricks in this very square?

A. I do not.

Q. Or just across the street, in the last few months?

A. I do not.

Q. Do you know of a sale of vacant ground near Mr. Whittemore's house recently?

A. I know of a sale, but I do not know the price.

C. J. BELL.

Subscribed and sworn to before me this 19th day of April, 1898.

JOHN W. HULSE,
Examiner in Chancery.

289 STILSON HUTCHINS, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined—

By Mr. KEANE:

Q. Mr. Hutchins, where do you reside?

A. 1603 Massachusetts avenue, Washington.

Q. How long have you resided in Washington?

A. Twenty years.

Q. You have bought and sold real estate in Washington and are familiar with its values?

A. I have bought and sold considerable real estate; yes. I do not claim to be very familiar with values.

Q. During how long a period of time have you bought and sold real estate here in Washington?

A. Ever since I have been here, twenty years.

Q. You have bought and sold real estate in quite considerable quantities?

A. Yes; I have bought several valuable lots and sold them.

Q. Mr. Hutchins, are you acquainted with and have you examined the property known as lots numbered 1, 2, 3, and 66, square 134, being the northwest corner of New Hampshire avenue and Q street?

A. Yes; I know that property. I would not say as to the numbers of the lots. I know the property at the corner of New Hampshire avenue and Q street.

Q. Will you kindly state what is your opinion of what was a fair value of that property in April, 1896? About how much a square foot would you say it was worth at that time, in your opinion?

A. I could only answer that question by comparison with prices that I understood have been obtained for property nearby or adjacent.

Mr. DARLINGTON: Before Mr. Hutchins answers further I object to any testimony based upon such comparisons with prices which rest upon hearsay.

By Mr. KEANE:

Q. To what properties do you refer?

A. To the Page property and to the property sold opposite Mr. Van Wyck's house, on Massachusetts avenue, called the church property. I believe it was a Swedenborgian church at one time.

Q. Assuming that it is established by the evidence in this case that the Thomas Nelson Page property sold for $6.15 a square foot about two years ago or a year and a half ago, and that the Church of the Holy Cross property sold for $8 a square foot, cash, in the fall of 1896, what would be your answer as to the effect of that knowledge upon you in forming an opinion of the value of the property on the northwest corner of New Hampshire avenue and Q?

Mr. DARLINGTON: I object to the question, and shall submit to the court that the opinion of Mr. Hutchins, based upon the fact that he has bought and sold some real estate, and that he is informed that these properties sold at the prices stated, does not form a basis of testimony as to values, and it is incompetent and inadmissible.

290

A. I should say that this property on the corner of Q and New Hampshire avenue was worth more than the Page property, in a general view of the values, and worth not as much as the Holy Cross property. I should consider that Massachusetts Avenue property was a better class and a more valuable class of property.

Q. Then about how much a square foot, in your opinion, would you say that this property was worth in April, 1896?

Mr. DARLINGTON: Objected to on the ground that no proper foundation has yet been laid.

A. I should say between the two prices—between $6 and $8. Mind you, I base it entirely on the correctness of those two figures, with which I am not personally acquainted—somewhere about $7 a foot, I should say.

Cross-examination.

By Mr. DARLINGTON:

Q. Mr. Hutchins, how near to this locality is the nearest piece of property that you ever bought or sold, and what was the date of the transaction?

A. It is pretty difficult for me to remember. I have bought the property on the corner of P and Twenty-first street-, which is perhaps five blocks from there, and on the corner of Fourteenth and Massachusetts avenue, which is seven or eight blocks from there.

Q. Do you recall about when these transactions took place?

A. I bought this Fourteenth and Massachusetts Avenue property about two years ago—somewhere along there. I traded for it—that is, I traded other property for it.

Q. With reference to the Page property, would you consider a single transaction of that kind as having any very material effect in fixing the values of property?

A. I think it is entirely as people require lots of that kind, of the size of this lot, and of the size of the Page lot. They are not quick-moving properties, and, probably, to a person who desires them, is pleased with the location, and is suited with the size of the lots to fill his views or wishes, they would bring possibly a better price than the market could do for them.

Q. Any man desiring just that kind of a lot might pay very much more than it was worth?

A. Yes.

Q. And the price he pays might be a very inadequate criterion to judge of similar property or property of a similar character?

A. Yes.

Q. Was this property at New Hampshire avenue and Q street ever offered to you?

291–370 A. Yes; I was shown it; I won't say that it was offered to me. It was offered to me, possibly, as a great many other pieces of property are.

Q. Do you remember by whom?

A. I think it was by Mr. Baumgras, but I won't be sure.

Q. Do you recall about when?

A. I should say it was more than two years ago; three or four years ago, maybe. I won't be positive that he was the one, but when I looked at the property here lately to get some idea about it I remembered that I had seen it before.

Q. Did you make any offer for it?

A. I do not think so.

STILSON HUTCHINS.

Subscribed and sworn to before me this 19th day of April, A. D. 1898.

JOHN W. HULSE,
Examiner in Chancery.

* * * * * * * *

371 HENRY R. DULANY, a witness produced on behalf of the complainant, being first duly sworn, was examined, and testified as follows:

By Mr. KEANE:

Q. Where do you reside?
A. City of Washington, D. C.
Q. How long have you resided here?
A. About thirteen years.
Q. What is your business?
A. Real-estate broker.
Q. How long have you been engaged in that business in Washington?
A. About thirteen years.
Q. During that time you have bought and sold real estate?
A. Yes, sir.
Q. And are you familiar with the values of real estate in Washington?
A. I think so; in certain portions of it.
Q. What, in your opinion, was the value of the property on the northwest corner of N. H. avenue and Q street, being lots 1, 2, 3, and 66, in square 134, about April, 1896?
A. Have you a plat of the property there?
Q. (Handing witness Exhibit E. C. B. No. 1.) Being 112 feet front and comprising about 6,373 square feet.
A. (After examining said exhibit.) For the purpose of a handsome residence I should value it at $45,000.

372 Cross-examination.

By Mr. DARLINGTON:

Q. Explain to us what you mean by that answer; that for the purpose of a handsome residence it was worth $45,000.
A. That was the use that it could be best put to, and for the purpose of a handsome residence I would value it at $45,000 to one who desired to erect a handsome residence on a lot of that kind in the city of Washington.
Q. When and how was your attention attracted to this property?
A. I have known of it for a long while; I cannot recall exactly. It was years ago.
Q. Was your attention particularly called to it in any way by anybody?
A. I think I had the property for sale a good many years ago on my books.
Q. About how many years ago; can you tell us?
A. Five or six; perhaps seven. I don't remember exactly.
Q. For sale for whom?
A. I cannot recall that. I remember the property. I do not know that it was quite as large a piece of property. I was just at the corner.
Q. At what price did you have it?

A. I cannot tell you that, either. I think it was a long time ago. It was a corner lot, with a little brick building on it.

Q. What offers did you receive for it?

A. I cannot remember.

Q. Did you receive any offers for it at all?

A. I cannot recall the fact that I did.

Q. How much per square foot is your estimate based upon?

A. About $7, taking it as a whole. It is a large piece of property and is susceptible of being improved by a large building.

Q. Does that increase or decrease the demand for it?

A. It decreases it. A man would hardly undertake to buy out several holders; it would be better to buy out one holder.

Q. My question is whether the fact of such a large property narrows or broadens the price of it.

A. It broadens it for a handsome residence.

Q. Is it your opinion that a person who is seeking for a large and broad site would go into that locality for it?

A. One seeking for a twenty-foot lot would hardly want to go in that locality if he wanted it for a small price, whereas a man who wanted to build a $100,000 house would go there.

Q. How much do you think that property was worth in April, 1894?

A. For one who wanted it, very nearly the same price he would pay now, except that in 1894, just after the panic, I do not believe people were looking for lots of that kind.

Q. Do you think the panic of 1894 made the situation worse than it is now?

A. I think the market value of 1894 was less than it is now, because there were more lots then than there are now. There are very few such lots as this at present.

Q. What do you think that property was worth in 1893?

A. I do not know. I would have to go back and see what similar property could have been purchased for at that time.

373 Q. Can you recall any similar properties that have been sold since April, 1894?

A. The property at the northwest corner of R and N. H. Ave. was sold about two years ago. That was the same sized property and same shaped property as this, being a northwest corner, and having a frontage on N. H. Ave. and R street, whereas this is on N. H. Ave. and Q street.

Q. Did you have anything to do with that sale?

A. Yes, sir.

Q. That is the R Street property—the Nelson Paige property?

A. Yes, sir.

Q. What did that sell for?

A. As well as I recall, a little over $6 a square foot.

Q. Do you think that was in 1896?

A. I think that was about two years ago; I would have to refer to my records. That is as far as I can positively say now.

Q. Any others?

A. Not that I know of, to my knowledge. I have known of other

sales in the neighborhood, but I do not know of my own knowledge what the price was.

Q. I wish you would endeavor to recollect who placed this property in your hands.

A. I could not do so without going over my records for years past; I could not come within two years past. I know I tried to purchase the little brick house on the corner. I thought it was to be the key to a handsome lot, but I did not succeed in doing it.

Q. How many pieces of property do you know of being sold for residence purposes since 1894 for $25,000 or $30,000 each?

A. I only know by hearsay the prices I quoted.

Q. You know none yourself except this Nelson Paige sale?

A. That is the only one I know. I can tell you several I have been told of if you desire.

Q. If I want any hearsay evidence I will let you know.

A. I am sorry I did not have a personal part in it.

Q. Suppose the fact were that this property has been in the hands of half a dozen or more agents, or had been in the hands of half a dozen or more agents for five or six years prior to April, 1896, at approximately the valuation you have put upon it, and none of them were able to sell it for that, would that influence your judgment at all?

A. Not the slightest. Somebody might came along the next day and take it for that price.

Q. Perhaps, on the other hand, if they wanted to wait four or five years without any return for taxes, would that affect your estimate of the value at all?

A. It would not if the man wanted it.

Q. Would it affect your estimate of the market value?

A. Not if a purchaser could be found.

Q. I am not talking about a possible purchaser. I am talking about the market value of it.

A. You must find a purchaser before there is a market value.

Q. Wou-d the fact that no person could be found in the market for anything like the price you have named for five years affect the market value of the property, in your estimation?

Mr. KEANE: Objected to because the hypothetical
374 & 375 question is contrary to the evidence, it being proved in this case already that numerous offers were made for about the same sum, or in that neighborhood, and declined.

(Question repeated.)

A. Not if the four or five years was such as we have been through. No one was buying that kind of property.

By Mr. KEANE:

Q. It has been testified in this case by the broker who made the sale of the Church of the Holy Cross property, at the corner of 18th and P St., just one block from this property, that it was sold to Henry Wadsworth for $8 a square foot, cash, in the fall of 1896. Would that fact have any weight with you in estimating the value

of this property in the same immediate locality; would you take that into consideration at all, being a sale of property in the same locality; would you let it have any influence with you in forming your judgment about what other property in that locality was worth?

Mr. DARLINGTON: Objected to as immaterial, leading, and so incompetent that further specific objections are deemed unnecessary.

A. I will answer, No; it would not. The lot would have its own value, independent of that.

H. ROZIER DULANEY.

Sworn to and subscribed before me this 21st day of March, 1898.
ROB'T L. MILLER, *Examiner.*

* * * * * * *

376 FREDERICK C. STEVENS, a witness of lawful age, called by and on behalf of the complainants, having been first duly sworn, is examined—

By Mr. KEANE:

Q. Mr. Stevens, where do you reside?
A. My legal residence is Attica, New York.
Q. Do you live in Washington now?
A. Temporarily.
Q. Whereabouts?
A. 1628 Sixteenth street.
Q. What is your occupation?
A. Banker.
Q. With what bank are you connected?
A. I am president of the West End national bank.
Q. Are you connected with any loan and trust companies; and, if so, which ones?
A. I am connected with the Washington Loan and Trust Company as a director.
Q. Any others?
A. Not in any official capacity; no.
Q. Have you been engaged in any business in Washington other than in connection with banks and trust companies?
A. I was engaged in the real-estate and brokerage business at one time; yes, sir.
Q. For how long a time?
A. About three years.
Q. For how long have you been identified in Washington or with Washington in business in connection with financial institutions and otherwise?
A. About eight years.
Q. While you have been in Washington in the capacities that you have mentioned did you become familiar with the value of real estate here?
A. Somewhat so.

Q. Are you acquainted with the property on the northwest corner of New Hampshire avenue and Q street, being lots 1, 2, 3, and 66, in square 134?

A. I know its location.

Q. You are acquainted with the improvements in that vicinity?

A. Yes, sir.

Q. What, in your opinion, Mr. Stevens, would be the value of that property in the spring of 1896; what would you consider it as worth a square foot?

Mr. DARLINGTON: Objected to on the ground that no sufficient foundation has been laid for the question.

A. I should say that the property was worth from $6.75 to $7 a foot.

377 Cross-examination.

By Mr. DARLINGTON:

Q. Mr. Stevens, during what years were you in the real-estate business here?

A. I cannot tell exactly. I have been in the bank six years; that would make it 1892; from about 1889 to 1892.

Q. The bank with which you are connected is a national bank?

A. It is.

Q. Your transactions in that connection, then, do not lead you into any real-estate loans or matters of that sort?

A. We make no real-estate loans.

Q. You referred to your connection with the Washington Loan and Trust Company. Are you a member of its valuing committee?

A. Not of the executive committee.

Q. Neither of the valuing nor the executive committee?

A. No, sir.

Q. What, if anything, have been your duties in connection with valuing property and passing upon the sufficiency of the security—I mean in connection with that institution?

A. You mean in connection with that institution?

Q. Yes.

A. Nothing.

Q. When you estimate the value of this property at $6.75 or $7 per square foot, what is the basis of your valuation?

A. The price which has been paid for property of a similar value or a similar location in the city, or a comparative value with that, and sales that I have been cognizant of, and making my own comparison.

Q. What do you think that property was worth when you were in the real-estate business?

A. I should say that property then was worth fully as much as it is now.

Q. Is there anything in or about the date which has been given

you, namely, April, 1896, which you connect in any way with the valuation you put upon the lot?

A. The sale of other property about that time, as I remember it.

Q. Have you any personal knowledge of any sales about that time of similar property in that locality?

A. Not of having personally had anything to do with the sale or purchase of property; only as it has been reported that the price was received by different people.

Q. Whether the report was well or ill founded, you have no means of determining?

A. I have none; no; only by my own judgment.

Q. Would you give that price for it?

A. What price?

Q. $6.75 or $7 a foot?

A. I think it would be a good speculation at $6.75.

Q. Would you give that price for it yourself?

A. I am not here to make an offer upon the property.

Q. Suppose it to be true that that property had been in the hands of very many real-estate agents for a number of years prior to April, 1896, at the price you have put, or approximating that price, and that no offers at all for the property, except in exchange for equities, had been received, would that affect your judgment as to its value?

378 Mr. KEANE: The question is objected to upon the ground that there is no basis in the testimony for the hypothesis on which the question is based.

A. I should say that it would make a good deal of difference.

Q. Will you explain why?

A. Because the value of property is usually determined by what it will bring.

Q. Let me ask whether the fact, if it be a fact, that this property has been held for quite a number of years, yielding little or no income and accumulating taxes, would not have much to do with its value?

A. It might if the property were to be purchased as an investment.

Q. By being purchased as an investment—you mean for sale again or for improvement?

A. For sale again—speculative investment.

Q. When you were in the real-estate business, who made the valuations upon which you effected loans?

A. I usually did.

Q. Upon your own judgment, or assisted by the opinions of others?

A. Usually from my own judgment; sometimes assisted by that of my partner; usually my own.

Q. As I understand you, you have no personal knowledge of any sales at or about the figures you have named for property in this locality?

A. If you mean by personally that I had a part in the transaction, no.

Q. I mean whether you know it otherwise than by being told by somebody that there had been such sales?

A. I had no other knowledge.

Q. Have you testified before as an expert as to the values of property in this city?

A. I have not.

Redirect examination.

By Mr. KEANE:

Q. Mr. Stevens, it has been testified in this case by the broker who made the sale that the Church of the Holy Cross property, on Massachusetts avenue and P street, sold in the fall of 1896 for $8 a square foot, cash. I would ask you what you would say in regard to the market for real estate in the fall of 1896 as compared with the spring of 1896, whether it was better or worse?

Mr. DARLINGTON: I object to so much of the question as purports to inform the witness what some other witness has testified to in this case as improper; and I object, further, because the testimony of the witness has not shown that he has been concerned in real-estate transactions or engaged in any business relating to it during the period inquired about in the latter part of the question.

A. I am unable to answer that question.

Q. What would you say, Mr. Stevens, as to the condition of the financial market in the fall of 1896 as compared with its conditions in the spring of 1896?

379 & 380 Mr. DARLINGTON: Objected to as irrelevant and immaterial, and upon the further ground that no foundation has been laid for testimony upon this point by the witness.

A. Generally the conditions in the spring of 1896 were better than in the fall.

Recross-examination.

By Mr. DARLINGTON:

Q. Why, Mr. Stevens?

A. That is a very hard question to answer. I don't think any one can answer that.

Q. Is it not a fact that the spring of 1896 introduced a Presidential election upon the currency question, which was determined in the fall?

A. That question was introduced then; yes.

Q. Is it not a fact that the uncertainty of the result of that election and the decision of that question affected the financial condition of the country, and particularly real-estate investments, during the agitation of the matter?

A. It undoubtedly did, but that might not have been the only factor.

Q. Do you know of any others to change the condition between the spring and the fall?
A. General uncertainty.
Q. Of what?
A. Of the financial condition of the country.
Q. Was that uncertainty greater in the fall than in the spring?
A. I think it was.
Q. Do you know what produced that increase of uncertainty?
A. Are we to talk politics?
Q. We want the financial facts if you have them.
A. The uncertainty as to the result.
Q. Was that uncertainty greater in the fall than it was in the spring?
A. It was very much greater.
Q. Was not the question determined in the fall—early in November?
A. In November; yes.
Q. Was it not a foregone conclusion for some time before November what the result would be?
A. Not in the minds of a great many.

FREDERICK C. STEVENS.

Subscribed and sworn to before me this 30th day of April, A. D. 1898.

JOHN W. HULSE,
Examiner in Chancery.

* * * * * * *

381 JAMES R. ELLERSON, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. KEANE:

Q. Mr. Ellerson, where do you reside?
A. My office is 605 14th street. I live at 1016 22nd.
Q. Washington?
A. Yes, sir.
382 Q. How long have you lived in Washington?
A. Six years this coming October.
Q. What is your occupation?
A. Real-estate business.
Q. Do you buy and sell real estate in Washington?
A. Yes, sir.
Q. Do you make loans on real estate?
A. Yes, sir.
Q. Are you familiar with the value of real estate in Washington?
A. I am reasonably so, I think, sir.
Q. Are you acquainted with the northwest corner of New Hampshire avenue and Q street, being lots 1, 2, 3, and 66, square 134?
A. I know where the property is; yes, sir.

Q. Are you acquainted with the improvements in the immediate vicinity?

A. Yes, sir.

Q. Will you kindly state what, in your opinion, was the value of that property in April, 1896, a square foot?

A. In 1896 that property was not prominently brought to my attention. I knew it as everybody else or a great many people did, in a general way, and in 1896 I did not place a valuation on it.

Q. What is your opinion of the value of the property at the present time?

A. My valuation is $7 or thereabouts a foot.

Q. What would you say in regard to its value in 1896?

A. I should not imagine that there was much change. I should think there was no change of much consequence.

Cross-examination.

By Mr. DARLINGTON:

Q. Mr. Ellerson, are you in business alone or are you a member of a firm?

A. I am a member of a firm.

Q. What is the firm?

A. Ellerson & Wemple.

Q. You commenced the real-estate business about when?

A. We commenced six years ago in October next.

Q. 1892?

A. Yes, sir.

Q. When was your attention first directed to this property and by whom?

A. This special property?

Q. Yes.

A. I don't know, sir, that it has ever been specially called to my attention by anybody in particular.

Q. When did you first make an estimate of the value?

A. Probably within the last week or two.

Q. What led to that?

A. I think one day I was in your office, wasn't I, Mr. Warner? I remember one day talking to Mr. Warner about it; just in a general manner, though.

Q. What led to the conversation with Mr. Warner?

A. I don't know, sir. As well as I recall, Mr. Warner dropped me a line regarding a piece of property that we had the handling of, and I went in to see him, and while there, as real-estate men frequently do, I happened to open a book, as I recall.

Q. You opened a book?

A. A plat book.

Q. And turned to this property?

A. I think Mr. Warner asked me what I valued that at, as well as I recall.

383 Q. Up to that time had you ever seen or valued it?

A. No, sir; not directly—not specifically.

Q. Have you made any more specific examination or valuation of it since that time?

A. No, sir; I have had no occasion to.

Q. Has anybody else spoken to you about it before you were examined here today?

A. No, sir.

Q. How did you happen to come here today?

A. I was subpœnaed here today. I mean to say this gentleman has spoken to me about it.

Q. Mr. Keane?

A. Yes, sir.

Q. When?

A. I think Mr. Keane was in my office maybe a week or ten days ago. Weren't you, Mr. Keane?

Mr. KEANE: I think so.

By Mr. DARLINGTON:

Q. You have to give your own recollection.

A. A week or ten days ago.

Q. How often?

A. Once.

Q. Only?

A. Only.

Q. Did you ever see him more than once before?

A. No, sir; not that I know of. I might have met him casually.

Q. Have any other person or persons spoken to you about this property?

A. No one. I might have heard it spoken of a dozen times or fifty times during my experience, but nobody in particular, I mean, sir.

Q. At what kind of a sale do you think that property is worth $7 a foot?

A. If you find somebody that wants it. Naturally, in these times, you would have to find the right man for the property. You can't sell it in the general market. You couldn't sell anything.

Q. That is, if you found some person who had a special desire for that property, he might give you that much for it?

A. Yes, sir.

Q. Is that easy to do?

A. No, sir; it hasn't been very recently.

Q. How long since there was this difficulty in finding a purchaser for property like this?

A. There hasn't been an active demand, you know, for real estate since 1893.

Q. Have you sold any property for $7 a foot in the last three years?

A. I have sold some within a few cents of $7 a foot within the last few years.

Q. Where was the property and about where was the sale?

A. The property was on H street between New York avenue and 14th street.

Q. Business property?

A. On the north side the Whittecomb stables; that transaction was closed, as well as I recall, the first day of December last.

Q. That was business property and was sold to the Columbia-University, which had adjoining property and desired an increase in area?

A. Yes. sir.

Q. With that exception have you sold any property at or
384 about the figures you have named for the past two or three years?

A. Not for the past four years; no, sir.

Q. How near a $7 sale have you made excepting that?

A. I really don't know, sir, without referring to my book; sales are not numerous, and I should remember, but I do not recall any now.

Q. Do you recall any as high as $4 a foot except that?

A. No, sir; I do not just now.

Q. Have you ever sold any property in the vicinity of New Hampshire avenue and Q street?

A. I don't recall just now, sir; really I do not; this is all new to me. I have not taxed my memory with it at all.

Q. Take a little time for reflection, if you desire, and please tell us what is the nearest property to this location, New Hampshire avenue and Q street, where you have sold or made loans on property since you have been in business.

A. We sold a piece of property last summer, I think it was, as well as I recall, or possibly it was September a year ago, just at the foot of Connecticut avenue beyond the boundary; we sold a house there and a lot; that was in September a year ago. I don't remember making any sales in that immediate section.

Q. About how far from Q and New Hampshire avenue is this Connecticut Avenue property you speak of?

A. That would be several blocks.

Q. Only?

A. That is all.

Q. Only several blocks?

A. Only several blocks.

Q. Do you recall what you got per foot for that ground?

A. Indeed I do not, sir. I couldn't tell.

Q. Not as much as $4 a foot?

A. No, sir; I don't think it was. There was a house on that, too.

Redirect examination.

By Mr. KEANE:

Q. It has been testified in this case by the broker who made the sale that in the fall of 1896 the Church of the Holy Cross property at Massachusetts avenue and P street, was sold to Mr. Henry Wads' worth at $8 a foot, cash. What would you say in regard to the con-

dition of the market in the fall of 1896 in comparison with the market in the spring of 1896?

A. We all know that there was no market in the fall, scarcely, of 1896—that is, as I recall. The silver agitation was going on at that time, and also in the spring. It was inaugurated in the spring and it had reached a pretty high stage, as I recall, in the fall. In fact, I know.

Q. Was it better or worse in the fall than in the spring?

A. I don't imagine it was any better at that immediate time. We all hoped to have much better times after the election, and we are still hoping.

385 Recross-examination.

By Mr. DARLINGTON:

Q. Mr. Ellerson, if, as you stated, there was practically no market for real estate in the fall of 1896, can you account for the sale of the Holy Cross Church property?

A. I don't say there was wholly no market. I say that the market was exceedingly dull.

Q. In fact, there were no sales except to persons who wanted property for a certain purpose?

A. No, sir; there was no special demand for property. You first had to find the buyer and look up what he wanted.

Q. In your experience as a real-estate broker do you find that a single sale made to a person who wants a particular piece of property is a safe criterion to judge of other property in the same neighborhood?

A. It depends upon circumstances.

Q. Altogether?

A. I think circumstances would govern that.

JAMES R. ELLERSON.

Subscribed and sworn to before me this 30th day of April, A. D. 1898.

JOHN W. HULSE,
Examiner in Chancery.

CHARLES E. BANES, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. KEANE:

Q. Where do you reside, Mr. Banes?

A. In Le Droit park.

Q. Washington?

A. Yes, sir.

Q. How long have you resided in Washington?

A. About twenty-five years.

Q. What is your occupation?

A. The real-estate business.

Q. How long have you been in the real-estate business?

A. About fifteen years.

Q. During that time have you sold any property located in Washington, and bought any?

A. Yes; I have.

Q. Are you familiar with the values of real estate in Washington?

A. Generally; yes, sir.

Q. Are you acquainted with the property located on the northwest corner of New Hampshire avenue and Q street, being lots 1, 2, 3, and 66, square 134?

A. Yes; I am acquainted with that location.

Q. Are you acquainted with the character and the nature of the improvements in the immediate vicinity there?

A. Yes, sir.

Q. Will you kindly state what, in your opinion, was the value per square foot of that property on the northwest corner of New Hampshire avenue and Q street in April, 1896?

A. About $7 a foot.

386 Q. Will you kindly state what the character of that property is and the nature of the surroundings in which the property is situated?

A. The surroundings there are among the best there are in town, in my opinion—that is, for resident purposes.

Cross-examination.

By Mr. DARLINGTON:

Q. How much ground is there in these lots, Mr. Banes?

A. The number of feet?

Q. Yes.

A. I don't know the number of feet.

Q. Can you approximate it?

A. I looked at it on the plat, but it has escaped my memory.

Q. Would not that have a great deal to do with the value?

A. The lot has a very great frontage, I understand; it runs off to a triangle, you know.

Q. Still, would not the area there have a good deal to do with the question of value?

A. The frontage makes it more valuable than it would if it ran back on a straight line.

Q. What is the frontage, as you recall it?

A. I don't remember now; I looked it up, but I don't remember.

Q. Is it fifty feet?

A. I judge it was more than that.

Q. Seventy-five?

A. I only guess at it now; I looked at it on the plat, but I don't remember.

Q. Would not the same area be worth a good deal more or less money, according as the frontage was seventy-five or fifty feet?

A. If it was seventy-five feet, I should think it would be worth more money than it would if it was sixty.

Q. Or fifty?

A. It is according to how it is cut up, you know. I looked at it and formed an idea of it when I appraised the property, but I have forgotten just now how many feet there were.

Q. Do you know what the width is in the rear?

A. No; I do not.

Q. How would it cut up into lots?

A. I couldn't tell you now. I was asked to appraise this property a few days ago, probably a week or ten days ago, and I took the plat and looked at it and figured on it.

Q. Do not all these questions which I have asked you affects its value very materially?

A. Yes; I looked into it then and saw how it would subdivide up and the location of it, and I came to the conclusion that it was worth $7 a foot.

Q. Do you remember now how you found it would subdivide up?

A. No; I do not.

Q. How many available resident sites are there on the property?

A. I don't think there was but one—one very large house. That was my idea about it.

Q. Would it admit of a stable?

A. I don't think there is any alley in the rear of it. Of course, if you build a house all on the front, you would have a side entrance to it.

Q. How much would the whole ground come to at the price
387 you have put? In other words, if a man wished to build a private residence there how much would he have to invest in the ground at $7 a foot?

A. I forget how many feet there were there.

Q. Can you give us approximately how much his ground would cost?

A. If my memory serves me right, it would come to about $42,000.

Q. At $7 a foot?

A. I think so. I don't know. There must have been about in the neighborhood of 6,000 feet of ground there.

Q. Do not purchasers who invest in houses, the mere site of which cost $42,000, generally want facilities for a stable?

A. They generally do, but they do not always have them.

Q. Does not the fact that the man who improves that property with a house would be unable to have a stable in his rear affect the value?

A. A great many people, when they build a large house, buy an alley lot somewhere in the neighborhood for a stable. It is cheaper for a stable.

Q. Still, that does not answer my question.

A. Sometimes they like to have a stable on their own property, but they do not always do it.

Q. At what kind of a sale did you estimate this property was worth $7 a square foot?

A. To somebody who wanted to build a very handsome residence.

Q. Are there many persons in the market, in your experience, who want to buy $40,000 sites?
A. No; not at the present time, especially.
Q. Or in 1896?
A. No, sir.
Q. In your experience in such matters, how long do you think it would take to find a purchaser at that price?
A. That is all guesswork; you can't tell.
Q. That is quite uncertain?
A. Yes; you might find one in a week or two, and then you might not find one in two or three years.
Q. If you did not find one in two or three years, the increase of interest and taxes would carry the figure very much above $7 a foot?
A. Provided the property did not improve in value, you know.
Q. What is the nearest sale you have made to this locality in the last several years?
A. I haven't made any near that, although I have bought property near the corner of 19th and S. That is the nearest I have bought there.
Q. When was that?
A. That was about three or four years ago.
Q. Do you recall what you paid for it?
A. $3.50.
Q. What was the size of the lot?
A. It is thirty-six by ninety.
Q. A corner lot?
A. Yes, sir; but of course it is not as good a location as this by a good deal.
Q. Was there a house on the lot when you bought it?
A. An old frame shanty. I tore it down. There was a house there, but it didn't amount to anything.
Q. What did you do with the lot?
A. I have the lot yet—I take that back. Mr. Dodge and I bought this lot together, and I sold my part to Mr. Dodge. He owns the ground now.
388 Q. It still remains there, does it?
A. Yes, sir.
Q. Did you buy it for speculation?
A. Yes, sir.
Q. You have not been able to turn it over yet?
A. No, sir.

Redirect examination.

By Mr. KEANE:

Q. Mr. Banes, does the existence of an alley enhance the value of property?
A. Yes, sir.
Q. Supposing that there is an alley connected with this property of some ten feet in width, and that the property abuts on that alley

some twenty odd feet. You would see no reason on that ground to diminish the appraisal of the property at $7 a square foot, would you?

A. No, sir. When I appraised the property probably I noticed the alley there. I don't know but it escaped my memory if there was an alley there, but if there was one on the plat I noticed it at the time. I never expected to hear anything more of this. I came in the office awhile ago and received this summons.

Q. The subpœna?

A. Whatever it is; yes.

Q. It has been testified in this case that in the fall of 1896 the Church of the Holy Cross property on Mass. Ave. and P street sold for $8 a square foot, cash?

A. Yes, sir.

Q. What would you say, Mr. Banes, in regard to the condition of the market in the fall of 1896, as compared with the condition of the market in the spring of 1896?

Mr. DARLINGTON: I make the same objection to this question as I have to the same question addressed to other witnesses.

By Mr. KEANE:

Q. Was it better or worse in the fall?

A. That is a question that I am unable to answer, because I don't remember. It has not been very brisk for the last three or four years, you know. I could not tell you particularly about the time from the spring to the fall of 1896.

Q. What would you say as — the condition of the financial market in the fall as compared with the spring of 1896?

Mr. DARLINGTON: Objected to on the ground that no foundation has been laid.

By Mr. KEANE:

Q. What would you say about that?

A. I think the times were better in the spring. The financial condition of the market was better then.

Recross-examination.

By Mr. DARLINGTON:

Q. Mr. Banes, how did you happen to make this appraisement?

A. This gentleman (indicating Mr. Keane) came in my office and asked me to appraise it.

389–391 Q. Did he discuss values with you at all?

A. Not that I remember; no, sir.

Q. He did not tell you why he wished an appraisement made?

A. I think he did. I think he said that the property had been sold or bought for less money than the real value or something to that effect, and he wanted to have it appraised. He asked me to appraise it.

Q. Was not this sale of the Holy Cross property which has been

referred to so exceptional as to attract very general attention at the time it was made?

A. No; I don't know that it attracted any greater attention than any sale—any large sale. You know, when a man makes a large sale of property in Washington, especially in these times, most everybody talks about it.

Q. Was not that sale exceptional at that time, both because it was a sale of a large property and because the price was pretty stiff?

A. I don't think the price was considered so very high.

Q. You know others, do you, of a similar character?

A. Sales like that?

Q. Yes.

A. No, sir.

Q. What do you mean when you say that the price was not high?

A. Because the property is an exceptionally good location there, as I understand it—about that section of the city, right around by Dupont circle.

Q. But there are a number of good locations in Washington, are there not?

A. Quite a good many, but not so many up in that immediate neighborhood.

Q. How many northwest corners are there between Q street and the end of New Hampshire avenue that are improved? Is not nearly every northwest corner on that street north of Q unimproved, vacant, and with a sale-board on it?

Mr. KEANE: Objected to on the ground that it does not present to the witness the same conditions in regard to the other corners that he did in regard to this particular one.

A. I would have to go up there and look at the northwest corners.

By Mr. DARLINGTON:

Q. You do not know?

A. No, sir.

Q. What other sales at or about that figure do you know of at or about that time?

A. I don't know of any other.

Q. How many within two or three dollars of it do you know?

A. I don't know of any.

CHARLES E. BANES.

Subscribed and sworn to before me this 30th day of April, A. D. 1898.

JOHN W. HULSE,
Examiner in Chancery.

* * * * * * *

392 WILLIAM B. GURLEY, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. KEANE:

Q. Mr. Gurley, where do you reside?
A. I reside in Washington, sir.
Q. How long have you resided here?
A. I first came to Washington in 1853.
Q. What is your occupation?
A. I am a broker on F street.
Q. With what, if any, financial institutions are you connected?
A. I am connected with the National Metropolitan bank.
Q. In what capacity?
A. I am a director in the National Metropolitan bank.
Q. Any other financial institutions?
A. I am a director in the Washington Loan and Trust Company.
Q. Any other?
A. Those are the only two financial institutions.
Q. Have you been engaged in the real-estate business here?
A. Not actively of late. When I first went into business I went into the real-estate business, and followed it up until about 1893, when it got pretty dull here.
Q. How long were you engaged in the real-estate business here?
A. I think about in the neighborhood of ten years.
Q. Are you acquainted with the values of real estate here; have you bought and sold property here?
A. Not recently; no, sir.
Q. Have you bought and sold property here?
A. I have been engaged in that business; yes, sir.
Q. Have you made loans on property?
A. Yes; I have made loans on property.

393 Q. You are acquainted with the values of real estate in Washington, more or less?
A. I am a little rusty on them now. I was, up to about 1893. I was appointed on the board of revision and assessments in 1893, and after that I did not do much in real estate. I gave my whole time to that.
Q. You say you are a director in the Washington Loan & Trust Company?
A. Yes, sir, and in the National Metropolitan bank.
Q. Are you on any of the committees in the Washington Loan & Trust Company?
A. I am on the auditing committee.
Q. Any other committee?
A. No, sir; that is all.
Q. How long have you been on that committee?
A. For the last five years, I guess.
Q. Mr. Gurley, are you acquainted with the property on the northwest corner of New Hampshire avenue and Q street?

A. Yes, sir; I recollect the northwest corner; right across from Mr. Whittemore's place, is it not?

Q. Yes; right across from Mr. Whittemore's place.

A. I know that property; yes, sir.

Q. Lots 1, 2, 3, and 66, in square 134. It has a frontage of 112 feet, and it has a depth of about 100 feet, and it abuts upon an alley——

A. It is a peculiar-shaped lot, if I recollect.

Q. It abuts upon the alley about twenty feet, and the alley is about ten feet broad, and it comprises 6,373 square feet or thereabouts. I ask you what, in your opinion, was the value of that property in the spring of 1896? What would you say was the fair value of that property at that time?

Mr. DARLINGTON: I object to the question on the ground that the witness has not professed to be familiar with values.

A. I recollect appraising that property in 1893.

Q. What would you say was its value in the spring of 1896—a fair value of that property a square foot? What would you say it was worth?

A. How many feet do you say are in it?

Q. How much would you say it was worth a square foot?

A. If it was mine, I would not sell it for less than about $7.50 or $8—that is, if it was my property. It is a corner, and that, I think, was very desirable. It is one of the few corners that I should pick out if I was buying real estate; but I——

Q. You consider that about its fair value?

Mr. DARLINGTON: I object. Let the witness finish his answer.

A. But I would like to add to that statement that in 1893, when——

Q. I am simply asking you in regard to 1896.

A. I only want to be consistent.

Q. The only question here is in regard to the value of the property in 1896.

A. Do you mean what would I give for that property?

Q. No; we simply want to know what it was reasonably
394 and fairly worth in the spring of 1896. Are you aware that the Church of the Holy Cross property sold in the fall of 1896 for $8 a square foot?

A. That triangular piece, where the church is?

Q. Yes; one block distant.

A. That is my recollection. Mr. Van Wyck bought it.

Q. It has been testified in this case——

Mr. DARLINGTON: I object to cutting off the answer of the witness and I submit it is not proper.

By Mr. KEANE:

Q. It has been testified in this case, Mr. Gurley, that in the fall of 1896—in October, 1896—the Church of the Holy Cross property at Eighteenth and P streets, one block distant from this property,

sold for $8 a square foot, cash, to Henry Wadsworth. The broker who made the sale has so testified under oath. Now, I ask you whether you would consider that the market in the fall of 1896 was better or worse, in comparison with the market in the spring of 1896, or whether it was about the same in regard to its condition. What do you say to that?

A. My transactions in real estate in 1896 were not quite numerous enough for me to give you an opinion on that. I recollect that triangular piece of ground. I think the Rev. Van Wyck owned it—some one who was in Congress here at one time—and I recollect it sold at a very handsome price. I think $8 a foot was the price, but I would not like to swear to that.

Q. It has been so testified in this case that such was the price. I ask you whether you can tell if in the fall of 1896 the financial market was as good as it was in the spring of 1896, or whether it was worse. Do you know about that?

A. I couldn't swear to that.

Q. You do not know about that?

A. No. I wouldn't like to swear to that.

Q. Could you tell as to loans upon real estate—what the usual percentage is in regard to that? What is the percentage of the valuation of property at which loans are made?

A. On property in that section I would not hesitate to loan a two-third valuation on it. I would not hesitate at all to do it.

Q. So that if property in that location were testified to be worth in the neighborhood of $45,000 or $50,000, what loan would you say could be readily obtained upon such property?

A. $25,000 or $30,000.

Cross-examination.

By Mr. DARLINGTON:

Q. Do you mean that if somebody should testify that that property was worth $45,000 or $50,000 you would loan $25,000 or $30,000 on it?

A. In that particular location I would be willing to loan it.

Q. Would not that depend a good deal upon who testified
395 to that value?

A. Certainly. I would want to be satisfied about the value.

Q. You do not mean to say that because somebody testified it was worth $45,000 or $50,000 that thereupon you would loan $25,000 or $30,000 upon it?

A. No; but if the sales in that neighborhood would indicate that that property could be sold at that under the hammer, I should not hesitate to loan $25,000 or $30,000 on it.

Q. Do you know of any sales in that locality in the last half dozen years?

Mr. KEANE: Objected to on the ground that in this case there is no question as to sales under the hammer, and on the further ground

that testimony in regard to sales under the hammer has no relevancy or materiality to the issues here formed.

Mr. DARLINGTON: The witness having testified that if the sales indicated that $45,000 or $50,000 could be realized under the hammer for this property he would lend $25,000 or $30,000, I submit my question is competent in view of that answer.

A. The only sale I recollect up in that neighborhood is the lot between Mr. Leiter's and Mr. Whittemore's property. I think that property sold for about $5. It was not a corner lot; it was an inside lot.

Q. That lot runs through to two streets, does it not?

A. I think it does, sir. That was a recent sale. That was sold within six months.

Q. What was the size of that lot?

A. I don't recollect, sir.

Q. Is it not a very handsome and desirable lot?

A. I couldn't tell you that. I just simply saw the record of it.

Q. Was that an auction sale?

A. No, sir; I think it was a private sale. Some lady bought it, I think.

Q. You understand that it was $5 a square foot?

A. That is my recollection; yes, sir.

Q. Which is nearer Dupont circle, this lot you now speak of or the lot at New Hampshire avenue?

A. The lot I now speak of is between Mr. Whittemore's and Mr. Leiter's.

Q. You were about to make some explanation, Mr. Gurley, of your statement in regard to what you would sell this lot for if you owned it, and the appraisement you made in 1893, when you were interrupted. Will you complete what you were about to say then?

A. I want to sustain my appraisement. In appraising property in the year 1893, when we knew the depression was before us, and about to be worse, my standing in the board was to put appraisements low, and for that reason my recollection is that I assessed that property at about $3.50; but that was based, as I say, upon my position as a member of the board of assessors, and with a view of looking forward to a depressed time, and knowing that property would not go, probably, above assessments.

Q. What time was it in 1893 you made that assessment?

A. I think it was in the fall of 1893.

396 Q. Has the depression in real estate diminished or increased since then?

A. Certain classes of property, suburban property, have certainly decreased since then.

Q. Has not all property pretty materially decreased since the fall of 1893?

A. I should say it had, to some extent; but I think property in the northwest stands better than any other.

Q. Was this appraisement made in 1893 the first or second ap-

praisement? There were two following pretty close together, were there not?

A. Yes; this was the second appraisement. Cook and the board before me had made one appraisement. This was the second appraisement.

Q. If I understand you, since 1893 your business has principally been in the direction of stock broker?

A. Yes; I have not done much in real estate since then.

Q. You were asked whether you had not bought and sold and loaned money on real estate in Washington. You answered that you had.

A. Yes, sir.

Q. Between what periods?

A. That was previous to my going on the board of assessors.

Q. So that your operations in that line were prior to this panic or depression in 1893?

A. Yes, sir; that is right. I found real estate was going to be dull and depressed, and I went more extensively into the security business.

Q. You say if that property was yours you would not sell for less than $7.50 a foot. Do you wish to be understood by that as saying that that property could be sold at that price now or in 1896?

A. I mean to say that that is one of the corners in Washington that I always had my eye on, and if I owned it I don't think I would sell it at all.

Q. You personally have quite a partiality for that lot?

A. Yes; and always have had.

Q. You do not mean to say that you think anybody would pay that price for it now or in 1896?

A. I don't think it would sell for that now; no, sir.

Q. Or in 1896?

A. I would rather under oath not make that answer, because I was not dealing much in real estate in 1896.

Q. You were not sufficiently familiar with real estate in 1896?

A. No, sir; I would rather not under oath make that statement.

Mr. KEANE: I would like to have noted on the record that the witness did not say $7.50, but $7.50 or $8.

Mr. DARLINGTON: Whatever the record shows. I do not remember what the record shows myself.

Mr. KEANE: You do not like to state the $8. You stated $7.50. I would like to have it stated on the record that the witness mentioned $8 as well.

By Mr. DARLINGTON:

397 Q. Suppose the fact were that this property had been in the hands of a number of real-estate brokers in Washington for years, and that rather urgent instructions from the owner to sell were given since 1892 or 1893, and that no money offer was

made for it by anybody, would that fact, in your judgment, affect its actual market value in 1896?

Mr. KEANE: Objected to upon the ground that the record shows that several offers were made for this property to the owner, all of which were rejected because they were less than $55,000, the price at which the owner stiffly held the property.

A. Do you wish me to answer that?
Q. Yes; answer the question.
A. Do you mean if that state of facts existed in 1896?
Q. Yes.
A. I should say the market value would be affected by dullness of the market. I would not like to say anything further than that.
Q. Would not the fact that property had proved incapable of being turned into money and was liable to remain on the owner's hands without interest, with the taxes accumulating, have a tendency to lower its value, where the inactivity had been for so long a period as I have named?

Mr. KEANE: Objected to on the ground that the proof shows that the owner of the property held the property stiffly at the sum of $55,000 and would not consent to a sale of the property at less than that figure and had rejected all offers that were made to her at less than $55,000.

The question was repeated as follows:

Q. Would not the fact that the property had proved incapable of being turned into money and was liable to remain on the owner's hands without interest, with the taxes accumulating, have a tendency to lower its value, where the inactivity had been for so long a period as I have named?
A. I was just going to say——

Mr. KEANE: That question is also objected to upon the ground that there is no proof whatever that the taxes were accumulating, but, on the contrary, it appears, if at all, that the taxes were paid as they fell due promptly.

A. I should think the whole thing would depend upon the ability of the owner to hold the property and the stress laid upon *them* to sell or being forced to sell. With property of that kind there is a class of buyers here in Washington who come here very often, and who would probably give more for that property than they would for property that *that* is not on a corner. You see, it is a desirable building site, and I should say if the party was able to hold it that that condition of things would not affect the market value.
Q. It would affect its value as an investment, pretty largely, would it not?
A. As an investment, yes, because you would have to be able to carry it and not be forced to sell it.
398 Q. Do I understand that, in your opinion, the ability of the owner to hold the property would have any effect on its market value in case it had to be sold?

A. I claim that the property would not be in the market, Mr. Darlington.

Q. I am asking about its market value in case of a sale—being on the market for sale. These conditions I have mentioned would affect its value under the circumstances I have stated, would they not?

Mr. KEANE: Objected to as immaterial.

A. It would simply affect it in sympathy with other property.

Q. Some reference has been made to this sale of the Holy Cross property. Is it not a fact within your experience that sometimes one piece of property will be sold at a very high figure, where a person particularly desires that property, without materially affecting the value of other property in the locality?

A. Yes, sir.

Mr. KEANE: Objected to on the ground that it proves nothing, and the question is irrelevant and immaterial.

A. I have known cases of that kind, where the purchaser is—not exactly a crank, but where a man wants a frontage on two or three streets—wants a peculiar-shaped lot, just like that triangular piece. No doubt in that case a man would give more for it than he would in other localities.

Q. In other words, a single sale does not necessarily determine the value of other property in the locality?

A. Not always; no, sir.

Q. You spoke of the desirability of a corner lot. Do the dimensions and the shape of that lot have anything to do with its value?

A. A good frontage on New Hampshire avenue would make the lot more desirable, I should think, on that corner.

Q. Does its susceptibility of division, so as to get two or more lots out of a piece of ground containing 6,000 feet, have anything to do with its value?

A. It does unless you are going to occupy the whole of it by a residence of your own.

Q. I mean for investment.

A. You mean to buy it on speculation, to sell again?

Q. Yes.

A. Yes, sir; it would have that effect.

Q. A very material effect?

A. Yes, sir.

Q. Are you sufficiently familiar with this lot to be able to tell us whether it is capable of being divided into two or more sites?

A. No, sir; my only knowledge of that lot is that it would be a very desirable lot for somebody to build a private residence on, to use all of the ground himself.

Q. Are you in a position to give us any information upon this question? How many building sites for single residences, at a cost of $25,000 or upwards, have been sold in the city within the last four or five years?

Mr. KEANE: Objected to as immaterial.

399 A. I could not tell, Mr. Darlington.

Q. The demand for that class of property has not been very great for the last few years, has it?

A. No; not of that class of property.

Q. Have you discussed the value of this lot, or has anybody discussed it with you, before you were called here today?

A. When I got this subpœna I referred to some figures that I had in the office—that is, a book of appraisements.

Q. But my question is, has anybody talked with you about the matter, about what valuation other people had put upon the lot, or about what it was worth, before you came here?

A. I will tell you. I asked Theodore Harding, who is a friend of mine——

Q. I am not asking for your conversation with other people, but whether other people have talked with you about it. I am not asking what the conversations were, but if other people did talk with you about it.

A. I am trying to give you the conversation I had with Mr. Harding.

Q. That would not be admissible. I am asking you whether you talked with persons about it.

A. Except in a general way, to see if I was correct, by refreshing my memory.

Q. Did you ever have any talk with Mr. Keane about it?

A. Who?

Q. This gentleman here.

A. I was served with the subpœna by Mr. Keane.

Q. Personally?

A. Yes, sir.

Q. Did you have any talk with him about this matter?

A. Simply to locate the property. That is all, sir.

WILLIAM B. GURLEY.

Subscribed and sworn to before me this 2nd day of May, A. D. 1898.

JOHN W. HULSE,
Examiner in Chancery.

W. RILEY DEEBLE, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. KEANE:

Q. Mr. Deeble, where do you reside?

A. At Woodside, Montgomery county, Maryland.

Q. Where do you transact business?

A. 1319 F street, Washington.

Q. How long have you transacted business in Washington?

A. I have been in business for myself just twelve years yesterday.

Q. What business have you been in during that time?

A. Real-estate and insurance business.

Q. Have you bought and sold real estate in Washington during that time?

A. I have, sir.

400 Q. Have you made loans upon real estate in Washington during that time?

A. Yes, sir.

Q. Are you acquainted with the value of real estate here?

A. Yes, sir.

Q. Are you acquainted with the property at the northwest corner of New Hampshire avenue and Q street, being lots 1, 2, 3, and 66, square 134?

A. I am.

Q. What would you say was the value of that property per square foot in April, 1896, to the best of your knowledge and belief—about how much a square foot?

A. I should say it was worth between $6 and $7 a foot; probably as much as $6.50.

Q. Upon that basis of valuation, assuming that there are 6,373 square feet or thereabouts of land there, about how much of a loan would be readily obtainable upon that property at that time?

A. From $23,000 to $25,000.

Cross-examination.

By Mr. DARLINGTON:

Q. Was this property ever in your hands for sale, Mr. Deeble?

A. I think it was. I am pretty sure it was.

Q. Placed there by whom?

A. Placed there by Miss Godfrey.

Q. About when?

A. I cannot recall the time. My sale books, by the terms of my partnership with Mr. Davis, were turned over to him. The sale business went to him when we separated.

Q. When was that?

A. That was the first of January, 1897. It was on the books at that time, I think.

Q. Could you let us know approximately about how long you had had it on your books for sale?

A. No; I cannot, sir. I have not looked up the books since I received the subpœna. I have not had a chance.

Q. As much as two or three years, probably?

A. Oh, yes.

Q. Did you ever get an offer of $7 a foot or $6 a foot for it?

A. No. To be perfectly frank with you, I never tried very hard, because I knew it was in the hands of several people. I am somewhat peculiar on that subject. I do not care to fool with property in the hands of three or four brokers. You run up against other people all the time in making a sale and you may have your work for nothing.

Q. You give more attention to sales when you have the exclusive right to sell?

A. Yes, sir.

Q. But still, during the several years this property was in your hands, did you ever get an offer, approximating the figures you have given today, for it?

A. No; I did not, but I did not use any great efforts, I assure you.

Q. Did you ever sell any part of this property?

A. I sold lot 3.

Q. To whom?

A. To Mrs. Godfrey.

Q. When?

A. That is another thing. I did not look that up, but I sold it to her—I really could not tell you the date now—for, I think, $5,500, if I remember rightly.

401 Q. You could not approximate it?

A. Along about 1890 or 1891, it seems to me. I could have looked that up, but I did not have time this afternoon to do it.

Q. Is that the part of the lot that is improved?

A. No, sir; that is immediately next to John Davidson's house.

Q. Do you recall about how many square feet there are in that ground?

A. Yes, sir; there are 1,950 square feet. I owned it a good many years.

Q. You sold that to her at about $3 a foot?

A. Between $5,000 and $6,000, I think, and it was about $3 a foot.

Q. How was property, relatively between the year 1890 and 1896, in regard to price and salability?

A. I should say it enhanced in value from 1890 to 1892.

Q. But I mean compare 1890 with 1896?

A. I should think it would be higher in 1896 than in 1890.

Q. You do?

A. Yes, sir; my theory of that property would be this, that from 1890 to 1892 it would enhance in value, and from 1892 to 1896 it would be just about stagnant—just stay at whatever value it was along about 1892—between 1892 and 1893.

Q. You think the terrible financial depression through which the country passed from 1893 on had no effect upon depreciating real estate in this city?

A. I do, but I think it had less effect in some sections than in others.

Q. Undoubtedly, but do I understand you to say it had no effect on this property at all?

A. I said I thought that property would probably be stagnant, but I do not think it would be depreciated in value. It is in a neighborhood where people generally can hold their property, and it is only in a neighborhood where people are compelled to sell that depreciation is so noticeable.

Q. But assume that this property was to be sold in 1896. What do you think about its relative obtainable price as compared with 1890?

A. That is a hard question to answer.

Q. Were not sales easy and prices booming in 1890 all over the District?

A. Yes; and sales were easy and prices booming in 1893, too, up to about the middle of May.

Q. How was it in 1896?

A. There were sales being made, but not as many.

Q. Very few, indeed, were there not?

A. In the early part of 1896 there were some, but in the latter part there were very few—that is, until after the election.

Q. Were not those sales at greatly reduced prices as compared with 1890, 1891, and 1892?

A. In some sections, in the eastern section of the city, they were, but in the direction of Columbia Heights they were very much higher. I sold property in Columbia Heights that was bought in 1892 at $1.25 a foot at $1.75.

Q. We agree that Columbia Heights was low at that time, that the boom had not fully reached its height there, and that it has not been much affected; but we are talking about property in
402 the city limits. Referring, however, to this Columbia Heights property, is it not a fact that rapid transit reached it after the panic?

A. Oh, no; I don't think that did it. I think it was because it was not affected by the street-extension matter. A person buying there was certain of what he was buying. He was not buying a lawsuit, as he was in every other section outside the city limits, so that within the city proper and in Columbia Heights was the most salable property. The property on Meridian Hill and Mount Pleasant and places affected by the street extension was absolutely unsalable.

Q. I want to see if we understand each other. Is your testimony that the salable value of property in 1896 was or was not materially lower than it was in 1890 where it was to be sold?

A. I do not think it was in that neighborhood, Mr. Darlington. I want to be understood about that, because in 1890, in East Washington, I could have gotton 54 cents a foot for a lot and in 1896 I could not get over 25 cents for it.

Q. Tell us what sales you knew of in the vicinity of this property at New Hampshire avenue and Q street, and how many sales you knew of that took place between 1893 and 1896 at anything like the figures you have given us today.

A. I don't know that I can recall them. I have a poor memory for such things; but I have been told that the lot of Thomas Nelson Page brought $6 a foot, and that is one square further out.

Mr. KEANE: I desire to state to the witness that it has been testified to under oath here that the Thomas Nelson Page property was sold for over $6 a foot. That was testified to by the broker, Mr. Dulaney, who sold it.

A. I got it from another source, too, that he paid $6 a foot for it, and I do not think it is as desirable a lot as this.

By Mr. DARLINGTON:

Q. That is one sale.

A. Of course. You are asking for sales. I just applied for a piece of property up on Eighteenth street—just above this. I tried to get it for a purchaser of mine, and it was held at $4 a foot by the owner. I think probably he would have taken $3.25.

Q. We are talking about sales.

A. I cannot remember the sales if I knew them.

Q. Do you remember any other sale except the Page sale in that vicinity?

A. I know of no other except the sale, by hearsay, of the church down there.

Mr. KEANE: I desire to state to the witness——

Mr. DARLINGTON: I object to things being stated to the witness while I am cross-examining him, and I call the attention of the court to the impropriety which Mr. Keane seems inclined to insist upon.

Mr. KEANE: Deeming it to be perfectly in accordance with propriety, I desire to state to the witness that it has been testified
403 in this case by the broker who made the sale, under oath, that the Church of the Holy Cross property, on Eighteenth and P streets, one block distant from this property, was sold in the fall of 1896 to Henry Wadsworth for $8 a square foot, cash.

A. I have heard of that sale, and this refreshes my memory That is all. I have a wretched memory, I can tell you that.

Q. Outside of these two sales, can you recall any others anywhere within half a dozen squares of that locality at more than $4 per square foot within the last four years?

A. At more than $4?

Q. Yes.

A. No, sir; I do not recall any—yes; I do. You say within the last four years?

Q. Yes.

A. The sale Mr. Gurley referred to, back of Whittemore's—between Whittemore's and Leiter's—at $5.

Q. Was that at $5?

A. I understood so. Of course, I do not know that of my own knowledge.

Q. Do you know the dimensions of that lot?

A. I understand it is thirty feet front and runs back to Nineteenth street.

Q. What depth?

A. Probably 125 feet.

Q. Is it over eighty feet deep?

A. It is 58 feet on one line. I looked it up in the plat book before coming over here to satisfy myself, and I saw that it is 58 feet on the New Hampshire Avenue line, but I do not have a subdivision of it, and I don't know just exactly how deep across the other line it is; probably 125 or 130 feet all through.

Q. That lot is in the shape of a parallelogram, is it not?

A. Not exactly.

Q. Very nearly, is it not?

A. No; I don't know exactly what shape you call it. I can draw it for you.

Q. There is no use to draw it, because the court cannot see that.

A. I cannot describe it. It is not just a parallelogram; it cannot be.

Q. That lot is just between Mr. Leiter's and Mr. Whittemore's, is it not?

A. Yes, sir.

Q. In estimating the property in controversy here as worth from $6 to $7 per square foot, do you mean to say that in your opinion that is its salable value?

A. Yes, sir; I think it is. It is worth that as a site for a house of residence. That is the only value I put on it.

Q. Do you think you could sell it for that?

A. I don't know about that right now.

Q. Do you think you could have sold it for that in April, 1896?

A. I don't know that; I couldn't say that, because if I could have sold it then I would have done it with great pleasure.

Redirect examination.

By Mr. KEANE:

Q. Was it not held by the owner in April, 1896, at $8.65 a square foot, being $55,000 for 6,373 square feet?

A. I couldn't say absolutely. I have not had a chance to look at my sale book.

404 Q. It was held at $55,000, was it not?

A. I could not give you the exact figures, but it was held at approximately that figure, and very stiff.

Q. It is admitted by the answers in this case that was on the books of B. H. Warner & Company in October, 1893, and that it was put on their books for $55,000.

A. The exact amount was approximately $55,000, but it was held very stiffly, I know.

Q. Therefore you could not have sold it for $6 or anything like that a square foot without the consent of the owner, could you?

A. No; not without submitting it, of course.

Q. Do you not know that Mr. Whittemore paid for the land adjoining his residence, on Q street, in April, 1893, $6.75 a square foot?

A. I don't know that; no.

Q. You have testified, as I understand, that this property was sold by you in 1890 or 1891.

A. I said about that time; I could not remember.

Q. Will you swear it was not in 1887?

A. No; I will not swear that it was not.

Q. If it was in 1887, if such is the fact, you are not willing to contradict that to be the truth?

Mr. DARLINGTON: We are agreed that Mr. Deeble has no disposition to contradict the truth.

A. I don't exactly understand your question.

Q. I say you have testified, according to the best of your recollection, that you sold that property in 1890 or 1891, but you are not willing to testify that it was not in 1887 or 1888 that you sold the property?

A. I am not willing to testify unless I refresh my memory. I do not want that to be understood as a fact under any circumstances. I will say that I have a loan on there of $4,000—on that lot 3—that I consider perfectly good. That has been on it ever since the sale; it was deferred-payment purchase note.

Q. Will you state which of the four lots it was you sold?

A. I stated that to Mr. Darlington; it was lot 3, square 134.

Q. Lot 3 is an inside lot, is it not?

A. It is the lot next to Mr. Davidson's house.

Q. That is on Q street?

A. Q street; yes, sir.

Q. Another question is this: Where several lots are together, as in this case, comprising a corner, does not the value of the lot become enhanced by reason of its being sold in conjunction with the other lots which form the corner than if it were sold separately?

A. Yes; I think so, in that locality.

Recross-examination.

By Mr. DARLINGTON:

Q. Do you think lots become more salable by being made larger, in that locality?

A. No; but I think this, Mr. Darlington: I think in building a handsome house a person would hardly want a lot much
405–408 smaller than that, you know, and if you take off that west twenty feet it would not bring quite as much money as it would if you left it there. It looks right down the avenue. I used to use that as an argument for sale when I owned it—that I could see from my twenty feet right straight down New Hampshire avenue.

Q. It would be purchasing a New Hampshire Avenue front?

A. Yes; that was it, because the avenue went southwest, you know.

Q. Something has been said about this property being put in your hands at a valuation of $55,000?

A. Yes.

Q. If, as a matter of fact, you had received an offer of $6 or $7 a foot, would you not have reported it to the owner?

A. Immediately, sir.

W. RILEY DEEBLE.

Subscribed and sworn to before me this 2nd day of May, A. D. 1898.

JOHN W. HULSE,
Examiner in Chancery.

* * * * * * *

409 JOHN C. DAVIDSON, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. KEANE:

Q. Where do you reside, Mr. Davidson?
A. 1807 Q street, Washington.
Q. How long have you resided in Washington?
A. I have actually resided here for ten years.
Q. Are you engaged in any business here?
A. Yes; real estate.
Q. How long have you been engaged in the real-estate business?
A. Fifteen years.
Q. During that time have you bought and sold real estate in Washington?
A. Yes, sir.
Q. Have you made loans on real estate in Washington?
A. Yes, sir.
Q. Are you acquainted with the property at the northwest corner of New Hampshire avenue and Q street, being lots 1, 2, 3, and 66, square 134?
A. Yes, sir.
Q. What would you say was the value of that property per square foot in April, 1896—what would you say it was rea-
410 sonably worth about that time a square foot?
A. You mean what it would bring?
Q. Yes; what it was worth—what would be the fair value of it, in your opinion?
A. I would value it from $6 to $6.50 a foot.
Q. Are you acquainted with the nature of the improvements there?
A. Yes, sir.
Q. Will you kindly state what is the nature of the improvements?
A. The improvements don't amount to anything, I don't think, in my opinion.
Q. What kind of a residence is on the corner opposite?
A. On this property, you mean?
Q. I am not talking about improvements on that property, but about improvements in the neighborhood. I will have my question repeated.

The question was repeated as follows:

Q. Will you kindly state what is the nature of the improvements?

Mr. KEANE: I spoke of the improvements in the vicinity, not upon the lot itself.

A. There are very fine residences all around it.

Q. What residences are in that vicinity—immediately contiguous—on the other corners?

A. On one corner opposite is Mr. Whittemore's; on another corner opposite is Lieutenant Clover's; on another corner is the Chinese legation; on another corner is Mr. Van Wyck's—General Van Wyck's, I think it is.

Q. Are there five corners abutting upon that plaza there?

A. Including this corner, yes.

Q. And there is a junction of how many streets there—what are the streets and avenues that meet there?

A. There are two streets and one avenue.

Q. Which corner is this—is it the northwest corner?

A. The northwest corner.

Q. It is the only remaining vacant ground, is it not?

A. It is not really vacant. It has a small house on it.

Q. With the exception of the small dwelling upon it?

A. Yes.

Q. What is the percentage of the value of property at which loans are made in Washington, Mr. Davidson?

A. All the way from a half to three-quarters.

Q. Of the value of the property?

A. Yes.

Q. State whether or not you ever desired, either on your own behalf or on behalf of any person whom you represented, to negotiate for the purchase of that property.

A. I have inquired the price of it.

Q. Of whom did you inquire the price?

A. At Mr. Warner's office.

Q. What were you told was the price of it at Mr. Warner's office?

A. I was told that they held it at $55,000.

411–451 Cross-examination.

By Mr. DARLINGTON:

Q. When was that, Mr. Davidson?

A. I cannot tell you within four years. It was somewhere arouud the nineties. I think between 1890 and 1896, but I have not the slightest idea as to when it was exactly.

Q. It was some four years or more ago?

A. At least that much, and maybe more.

Q. What became of the negotiation?

A. It has been too long ago to remember. Somebody asked me to find out——

Q. I mean what became of the negotiation after you found out the price it was held at?

A. I found it was entirely too high.

Q. And dropped it?

A. Yes.

Q. In giving the figures you have given, $6 and $6.50, you have in mind a purchaser for what purpose?

A. For a special residence.

Q. To a purchaser, as an investment, what price do you think could have been realized from that property in 1896?

A. Not over $5 a foot.

Q. Does your firm buy property on its own account sometimes?

A. Yes.

Q. Would you have given as much as $5 a foot for it in 1896?

Mr. KEANE: Objected to on the ground that it is utterly irrelevant and immaterial as to what this witness would have paid for the property.

A. I would not like to say. It would depend altogether on the money we had. I do not remember whether we were fixed at all about it at that time.

JOHN C. DAVIDSON.

Subscribed and sworn to before me this 2nd day of May, A. D. 1898.

JOHN W. HULSE,
Examiner in Chancery.

* * * * * * *

452 ARCHIBALD M. MCLACHLEN, a witness of lawful age, called by and on behalf of the complainant, having been first duly sworn, is examined—

By Mr. KEANE:

Q. Where do you reside, Mr. McLachlen?

A. I reside in the District of Columbia.

Q. How long have you resided here?

A. Seventeen years.

Q. What is your occupation?

A. I am a real-estate broker; I am secretary and treasurer of the McLaghlen Real Estate and Loan Company.

Q. How long have you been connected with the real-estate business?

A. I have been in the real-estate business for about twelve years.

Q. Here in Washington?

A. Yes, sir.

Q. During that time have you bought and sold real estate in Washington?

A. Yes, sir; I bought and sold before that, but as an operator, not as a real-estate broker.

Q. You have made loans on real estate in Washington during that time?

A. Yes, sir.

Q. You are familiar with the values of real estate here?

A. Fairly so.

Q. Are you acquainted with the northwest corner of New Hampshire avenue and Q street, being lots 1, 2, 3, and 66, in square 134?
A. Yes, sir; I know the property.
Q. Were you acquainted with that property in 1896?
A. Yes, sir.
Q. If so, what would you say was the value of that property a square foot in April, 1896?
A. I should place the value at between $7 and $8 a square foot.
453 Q. How much of a loan would it bear at such a valuation?
A. I have never dealt in large loans of that character, but I should have judged that it would have carried a loan of $25,000.

Cross-examination.

By Mr. DARLINGTON:

Q. Was this property improved or unimproved in April, 1896?
A. It was partly improved.
Q. What proportion of your valuation do you base on its improvements?
A. I do not class the improvements as of scarcely any value on a property of that kind.
Q. Your valuation is placed upon the ground alone?
A. Yes, sir; on the ground.
Q. How much ground is there there?
A. I think about 4,600 feet—something like that.
Q. Is that so situated as to be capable of subdivision into two or more lots?
A. Probably two building sites, if necessary.
Q. You think it would make two building sites?
A. Probably—yes; although being much better for one.
Q. Is it with a view to its being made into two building lots, or one, that you value it?
A. One; its value is as one site.
Q. Your valuation is put upon it, then, with a view to its being purchased as a building site at a cost of how much in gross?
A. Somewhere in the neighborhood of $47,000 or $48,000; along there.
Q. Suppose there are over 6,000 square feet; would that affect your idea of its value at all?
A. It would depend on how the 6,000 feet was situated, how it was located.
Q. But you know the location of the lot, do you not?
A. Yes, sir.
Q. Suppose that lot contains over 6,300 square feet, and, as you say, is most valuable for a single residence site?
A. As a matter of fact, I think there is more than I stated. I think I was incorrect in that statement. As a matter of fact, it is more than that.
Q. My question is, whether if that single site comprises over 6,300 square feet that would affect your ideas of value at all?

A. No; the site that you are questioning me about is valuable as one single site. It is a fine location.

Q. Would the quantity of ground comprised in it, and thereby necessarily increasing largely the cost of the site, affect the value at all?

A. No, sir.

Q. Suppose there are 10,000 feet of ground there, and still it is eligible only for a single residence, do you think the price would be the same?

A. That would be a little excessive. There is a demand here always for choice building sites in a choice section, during the dullest times.

Q. How many sales of lots for approximately $50,000 each for a single residence have you effected in the last three or four years?

A. I have not made any. I do not claim to have made any.

454 Q. How near to that figure have you sold any lot within the last three or four years?

A. I have never dealt in that high-priced property.

Q. How near a $50,000 residence site have you dealt with or sold?

A. I have not made a specialty of that class of property.

Q. I understand that, but I want you to tell us some property as near to that as you have realized.

A. In what section?

Q. In any section of the city of Washington.

Q. You mean the largest unsubdivided tract?

Q. I mean the largest sale of a single building site.

A. I have not my books to refer to. I cannot rely on my memory altogether.

Q. We appreciate that you are at this disadvantage, but I ask you to think the matter over and give us the nearest approximation you can recollect.

A. We sold the property in the next square, 1759 Q. Of course that was improved. We sold that for $16,000, cash.

Q. Improvements and all?

A. Yes, sir.

Q. What was the character of the improvements?

A. A three-story stone front, I think. I suppose the house was worth about $8,000, and probably the lot was worth about $8,000.

Q. Do you recall the dimensions of the lot?

A. 20 x 100.

Q. I do not like to ask you anything that is unreasonable, but I wish you would tell us the nearest approximation you can give to a sale effected by you of a single residence site to the figures given by you as the value of this lot.

A. Our large sales have largely been in the county. We have made a specialty of suburban properties. We have made a good many pretty good sized sales in the northeast.

Q. But we are now speaking of single residence sites.

A. Yes. We have sold properties on O street near Sixteenth, vacant ground. We have sold quite a little property on Oregon

avenue—I am referring to that section—and innumerable lots in the northeast and southeast, but as to the highest price we have ever obtained for one single building site in the city I could not tell you that offhand. I could refer to our record and tell you.

Q. Can you recall any as high as $10,000?

A. No, sir.

Q. $5,000?

A. I couldn't say that I can, now.

Q. What is the largest loan you can recall effected by yourself or your firm on a single residence site of that kind of property?

A. I think about $8,000 is about the limit.

Q. That was unimproved property?

A. Improved.

Q. My question was, What is the largest loan on an unimproved building site?

A. I couldn't say.

Q. Can you recall one as large as $4,000, a single residence site?

A. I could not without referring to our record.

Q. Has your business lain principally in the direction of selling real estate, or lending money and discounting notes?

A. Our principal business has been the sale of real estate. In connection with the general real-estate business and loaning we have handled a great deal of suburban property.

455 Q. During the last three years what proportion, approximately, of your business has been lending money and discounting notes?

A. I suppose our revenue, probably a third of it, has been from loans and interest—discounts.

Q. In putting the valuation which you have named upon this property, you contemplate what kind of a sale? I mean by that, do you mean a sale to a person buying for investment or a sale to a person who has a fancy for a choice residence?

A. A person wanting a fine residence.

Q. What would you consider to be the market value of that property in April, 1896, to an investor who was buying with a view to a profit on his money?

A. I have stated already what I consider its value. Of course, an investor would probably want to buy the property a little under its value.

Q. Does not an investor have to look at not only what some person who chances to fancy such a site as that would pay for it, but the probabilities of an early sale and one at a long distance of time?

A. Yes; he could not buy it with the intention of holding it unimproved long at that figure.

Q. Suppose the fact were that this property was in the hands of very many real-estate agents for four or five years prior to April, 1896, for sale at about the figure which you have named, approximately, and that no money offer at all was received by any of them during that period, would that at all affect your judgment as to value?

Mr. KEANE: Objected to on the ground that the question is irrelevant and immaterial, and that the proofs in this case show that the complainant declined several offers that were made to her for the property because they were not as much as the sum of $65,000, which she had placed upon the property.

Mr. DARLINGTON: I do not want to be under any misapprehension about this matter. If Mr. Keane can remember any money offer for the property disclosed by the evidence, I should be glad if he would refresh my recollection about it.

Mr. KEANE: My objection speaks for itself, and the record shows that my objection, which has been carefully worded, is borne out by the record.

A. It might indicate that there were not many wanting it at the price asked.

Q. It would indicate, would it not, that the purchaser would have to look forward to the probability of his holding it four or five years without an opportunity to sell?

A. Do you mean an investor or a purchaser for a home?

Q. An investor.

A. Yes; it would depend largely upon the price asked and the value of the property.

Q. My question assumes that the price was appoximately the figures which you have named.

A. If you will state it that way I shall be glad to answer it.

Q. That is the way it is stated.

456 A. At the figure that I have named? I thought you said at the price the property was held at.

Q. No; I said a figure approximately like the valuation which you put upon it.

A. Of course, if there was no cash offer——

Q. Money offer, not cash.

A. No money offer; it would indicate that possibly the right party had not come along.

Q. And an investor buying the property would have to contemplate the probability that he would have to hold it for four or five years or longer, losing interest and paying taxes, would he not?

A. There is, of course, less opportunity to sell a fine tract of land like that than to sell a cheaper piece of ground.

Q. Have you personal knowledge of any sales of property in that locality at as much as $4 per square foot?

A. Not personal knowledge; no, sir. I have information, of course, from the press, and so on.

Q. Aside from the Page property, at New Hampshire avenue and R street, and the Holy Cross property, near Dupont circle, have you information of sales in that vicinity at more than $4 a square foot in the last four years?

—. I cannot say that I have any definite knowledge of any transaction of that kind.

Redirect examination.

By Mr. KEANE:

Q. Mr. McLachlen, it has been proved by the broker who made the sale that the Church of the Holy Cross property on 18th and P streets, one block distant from this property, was sold to Henry Wadsworth in October, 1896, for $8 a foot cash. What would you say in regard to the condition of the market in the spring of 1896 as compared with the condition of the market in October, 1896?

A. I do not think there was any material difference in it.

Recross-examination.

By Mr. DARLINGTON:

Q. I omitted to ask you what attracted your attention to this property and made you to make an estimate of its value?

A. The property was placed in our hands for sale, sir.

Q. When?

A. I could not give you the date without referring to our record.

Q. Approximately how long?

A. I do not carry dates and figures in my head.

Q. Who put it in your hands for sale?

A. I could not tell you that right now. I know we had the property on our books, and I took a look at the property, and, of course, I considered it very desirable.

Q. Did you ever have an offer for it?

A. Excuse me going back. I remember now there was a *a* young gentleman named Melbourne, who was with Robinson &
457 Blacksford, who called my attention to the property at the same time he called my attention to the other piece of property on Connecticut avenue above R street, I think.

Q. He called your attention to it in what connection?

A. He asked me to endeavor to sell it. At that time I had an inquiry for a site of that kind.

Q. Did you ever receive an offer for it?

A. No, sir; not a cash offer. I rather lost track of this young man. He did not come to see me any more.

Q. Did you ever receive an offer of any kind for it?

A. No, sir; I have had no offer for the property.

Q. Has your attention been brought to the matter recently by any one?

A. No, sir.

Q. How recently were you asked to come here and give a valuation, and by whom?

A. I think it was yesterday that this gentleman (indicating Mr. Keane) called and told me he had a subpœna for me. He also gave me the information that I was considered one of the prominent dealers here, which was, of course, a little flattering, a suggestion I rather denied, and I told him that I had never made a specialty of this high-price property. I have, as a general matter, kept run of

values, because I have a good deal of property myself and very naturally my mind runs that way, and I try to keep track of what is going on and what sales are being made.

Q. Was there any conversation between you and him or between you and any one else as to what values were attached to the property?

A. No, sir.

Q. Was anything said about the evidence in this case?

A. I don't remember that there was.

Q. Were you advised at all as to the nature of this controversy in which this testimony is being taken?

A. I can't say that I was. I knew in a general way that there was some conflict in regard to it, but the exact details I could not say. There was some man named Dutton mixed up in it.

Q. Was this conversation yesterday?

A. No; I heard it yesterday.

Q. I mean was your conversation yesterday?

A. It was yesterday; yes, sir.

Q. At that conversation were these things spoken of?

A. Just in a general way. I was asked to come here and told that I would be subpœnaed, and I rather endeavored to decline coming.

Q. Was that the first time you had been approached on this subject, yesterday?

A. No, sir.

Q. When was an earlier time than that?

A. Yes; it was the first time I was approached in respect to this matter, but I had heard of this transaction some time ago, when we became agents for the property above there on Connecticut avenue.

Q. Through whom?

A. I think it was through Mrs. Godfrey. Mr. Darlington, I wish to correct that again. Our information came through Mr.
458–460 Hood. I merely mention it to show that my memory is a little defective. Mr. Hood referred the matter to us, he being the president of our company, and I suppose, as a matter of business, he referred the property to us. We put up our signs and endeavored to rent it.

Q. What property is that?

A. It is the property on Connecticut avenue.

Q. What is your company, Mr. McLachlen?

A. The McLachlen Real Estate and Loan Company.

Q. What Hood is that?

A. James F. Hood.

Q. Did you ever see Mrs. Godfrey or Miss Godfrey before today?

A. Yes; I met the ladies.

Q. When?

A. I couldn't say, really. I suppose it was after Mr. Hood placed the property in our hands. Mrs. Godfrey and her daughter called in regard to the house and gave us some information about the property.

Q. About this controversy?

A. No; about the property.
Q. Did they talk with you at all about this controversy?
A. They referred to it incidentally.
Q. Are you now the agent or is your company now the agent for the Connecticut Avenue property?
A. No, sir; they took the property out of our hands.

ARCHIBALD M. McLACHLEN.

Subscribed and sworn to before me this 4th day of May, 1898.

JOHN W. HULSE,
Examiner in Chancery.

* * * * * * *

461–879 B. H. Warner & Co.'s sales department.

To owners:

There are few people desiring to purchase property in this District who do not call for our list before doing so. Frequently we can suit them; sometimes we cannot. The fact remains, however, that if you wish to call your property to the attention of a large class of buyers it may be done by placing it on our books for sale. It will cost you nothing unless a sale is effected, in which case only legitimate commissions will be charged. Our facilities are unsurpassed for handling all classes of property for sale within the limits of the District of Columbia.

We can show the best results for owners who give us the sole agency of their property, both as to selling and renting, as in such cases we advertise the property extensively at our own expense, and otherwise give it attention that we cannot afford to give to property in the hands of other agents at the same time.

All entries will be held in force until changed or withdrawn by notice, and all reasonable offers secured will be promptly reported.

Endorsement: Complainant's Exhibit No. 1. (May 4th, 1898.) Property for sale by B. H. Warner & Co., real-estate brokers, 916 F St. N. W., Washington, D. C. Notary public.

* * * * * * *

880 CHARLES W. FAIRFAX, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. DARLINGTON:

Q. What is your business?
A. Real-estate business.
Q. How long have you been engaged in that business?
A. About eight years.
Q. Where?
A. 806 F street the greater length of the time. Before that at 613 12th street.
Q. Has this entire eight years been here in Washington?
A. It has been spent right here in Washington; yes, sir.

Q. Have you been transacting business alone or with some one else?

A. I am in business now with Mr. Stone.

Q. What is the firm name?

A. Stone & Fairfax.

Q. Prior to that connection with him what was your business?

A. I was salesman of the firm originally.

Q. During these eight years can you tell us generally what lines of real estate you have been engaged in?

A. Nothing special, just generally. We were fortunate enough to have some high-class property, but principally middle class and smaller property.

Q Has your business been confined to the sales of property, or has it also included real-estate loans?

A. Loans and rents, and especially sales. We have given special attention to sales.

Q. Do you know the property in controversy here—that is, the property at the northwest corner of New Hampshire avenue and Q street?

A. Yes, sir; I am somewhat familiar with it.

Q. How long have you known that property?

A. I have known it a long while.

Q. Has your attention at any time been particularly directed to it?

A. Not particularly; no, sir.

Q. Have you recently been requested to form an opinion as to its value?

A. Mr. Warner asked me to look into the matter and see what I thought of it.

881 Q. Have you done so?

A. I have informed myself in a fair way; yes, sir.

Q. What in your opinion was that property worth per square foot in April, 1896?

A. I told Mr. Warner I did not think that property was worth what he gave for it.

Q. Without regard to what you told him, what is your opinion as to what it was worth?

A. I think the top price was $4.50. In fact, as I said then, I do not think I would contract to sell that property at that price at that time or this present time.

Cross-examination.

By Mr. KEANE:

Q. How old are you?

A. I am twenty-five years old.

Mr. KEANE: That is all I care to ask you.

Sworn to and subscribed before me this 20th day of May, A. D. 1898.

ROB'T L. MILLER, *Examiner.*

GEORGE W. LINKINS, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. DARLINGTON:

Q. What is your occupation?
A. Real-estate broker and agent generally.
Q. How long have you been engaged in that business in Washington?
A. Since the 19th of August, 1886.
Q. To what extent have you been concerned in the sale of real estate during that period and in loans on real estate?
A. I have been doing a general real-estate business during that period.
Q. Are you familiar with the property at the northwest corner of New Hampshire avenue and Q street?
A. Yes, sir; I have dug potatoes on it when I was a boy. My father owned that whole square.
Q. Have you been asked recently to form an opinion or estimate as to what the value of that property was?
A. I was asked by Mr. Wine to testify in regard to my opinion as to its value.
Q. Suppose you give us the benefit of your judgment as to its value in April, 1896.
A. My judgment of its value at that time and since—I see no reason to change it since by reason of anything that has occurred in the market, to make any change in my opinion since that time; I should say it was worth about $4 a foot.
Q. At what kind of a sale?
A. I should say at a private sale. You might have a public sale there and not get a bid. I have had some experience of that kind lately.
Q. And $4 a square foot is your estimate of its value at the present time?
A. Yes, sir; including improvements.

882 Cross-examination.

By Mr. KEANE:

Q. When did you have your conversation with Mr. Wine in which he asked you to be a witness?
A. By telephone yesterday morning.
Q. Did you tell him you would not have time in which to prepare yourself adequately?
A. No, sir; I did not.
Q. In which to come here and testify in so short a time?
A. No, sir; I did not think I needed any special preparation for it.
Q. You did not think you needed any special preparation for it?
A. I did not.
Q. What have you done since towards preparing yourself?

A. Nothing, except simply to think over the matter generally.
Q. Think of the matter generally?
A. Yes, sir; to think of the matter generally.
Q. You just sat down and thought about it, did you?
A. No, sir; I did not sit down.
Q. You walked around?
A. I did some walking around, and possibly might have thought some of it sitting. I could not tell you exactly the position in which I was when I thought.
Q. You simply meditated on the subject?
A. Yes, sir; that is so.
Q. What did you do towards informing your mind of what property in that neighborhood had sold for around the time of April, 1896?
A. I have sold some——
Q. (Interposing.) I ask you——
Mr. DARLINGTON: Do not be diverted from your answer; do not allow yourself to be broken off in your answer. You started to answer the question, and I insist that you finish it.
Mr. KEANE: I call this witness' attention to the fact that it is his duty to make direct and responsive answers to all questions, and I shall require him to discharge that duty.
Mr. DARLINGTON: The answer to the question, so far as he was allowed to proceed, seems to have been responsive to your question.

(Question repeated.)

Q. What have you done towards informing your mind?
Mr. DARLINGTON: Now proceed with your answer.
A. I have done nothing since I took this matter under consideration. I considered I had sufficient knowledge to come here, and testify without any further preparation in the matter.
Q. Did you inform yourself in regard to the dimensions of this property?
A. I did. I looked at it on the plat.
Q. What are its dimensions?
A. My recollection is—I did not make a memorandum of it, and I only give it to you as nearly as I can. I think there is about sixty-five feet, possibly, on Q street and possibly not so much
883 on New Hampshire avenue. I did not look at the lines of the property exactly, but I know about the size of it.
Q. Do you undertake to swear in regard to the value of a piece of property about even the dimensions of which you are ignorant?
A. I am not swearing about the dimensions of it. I am swearing that that piece of property is about so many square feet in my judgment.
Q. And do you admit that you do not even know what the dimensions of that property are?
A. It is about 100 feet deep, running back to the alley. The exact figures of the front I did not consider necessary in order to make up my judgment of its value per square foot.

Q. You do not consider it was necessary for you to know how much of the property abuttted on New Hampshire avenue?
A. Not in exact feet and inches; no, sir.
Q. How could you testify in regard to the value of that property intelligently without knowing its dimensions?
A. Per square foot?
Q. Yes.
A. Very readily.
(Question repeated.)
A. A few square feet more or less would not make any difference, in my judgment, as to its value per square foot.
Q. How many feet abut upon New Hampshire avenue?
A. I have told you that I did not remember exactly; that I did not fix those figures in my mind.
Q. About how many feet abut on New Hampshire avenue?
A. I am not going to say "about."
Q. How could you intelligently form an opinion about the value of that property per square foot without knowing about how many feet abut on New Hampshire avenue?
A. I have answered that question.
Q. You have answered that a few feet more or less——
A. (Interposing.) Of frontage.
Q. (Continuing:) Would not affect your judgment?
A. Yes, sir.
Q. And then you admitted that you did not know even about how many feet abutted on New Hampshire avenue, and then I inquired how could you intelligently form an opinion about the value of that property per square foot without knowing about how many feet abut on New Hampshire avenue, and I ask you to answer that question.
A. I have been on that property and know the location of it, its situation, and what it might be used for, in my judgment, is made up fully from that as to the possibility of the use of it as a whole.
Q. But do you not know it is customary where a man is called upon to appraise property to go and visit the property before he forms his opinion as to its value?
A. I have. As I told you before, I have dug potatoes on that very property, and it was not necessary for me to go there today and stand in front of that property and view it and take its dimensions. That was not necessary.
884 Q. Do I understand, then, that you are basing your value as a real-estate expert here upon the fact that you once dug potatoes?
A. No, sir; you do not understand anything of the kind. I will explain to you that I am basing my judgment solely upon my general knowledge of the values of real estate and what I have done right in that neighborhood.
Q. All you say you have done is to dig potatoes?
A. Yes; but you stopped me. I was about to say when I was broken off in my answer that I sold the northeast corner of Nine-

teenth and Q street. I have sold two other pieces of property in that square and made some loans in that square.

Q. How long a time were you engaged in the business of digging potatoes?

A. Possibly a day at different times. I was a boy then, and my father owned that whole square, except a small frontage on Nineteenth street. He at one time owned the whole square. Therefore I am pretty familiar with that whole square of ground, and I sold——

Q. (Interposing.) There is no question, now, to be answered.

Mr. DARLINGTON: You started to say something. Proceed with your answer.

Q. How old are you?

Mr. DARLINGTON: I insist that the witness has a right to finish his answer.

The WITNESS: On the second of February, 1889, I sold to Mr. Varnell the northeast corner of Q and Nineteenth street for $11,500. That was a new house at the time, just built by Fox, Dubant, and a man named Parker.

Q. Now, will you kindly tell me how old you are?

A. Fifty-one years old.

Q. How old were you when you were digging potatoes?

A. Possibly 17 or 18, along there; possibly a little older. I do not remember exactly.

Q. You were 17 or 18?

A. I may have been a little older possibly. I do not remember the date. I did not anticipate that I was going to be examined here in regard to that.

Q. What was the character of the surrounding neighborhood there when you were digging potatoes?

A. That ground has been filled up seven feet on that spot. That ground was dry, generally, but all above it was all marshy.

Q. What was the character of the improvements in that neighborhood when you were digging potatoes?

A. None, except one house fronting on Nineteenth street near the corner of R.

Q. And what did you know about the value of that property there, as an expert, when you were digging potatoes?

A. I knew very little about it, and thought very little about it at that time. My thinking has all been since. I thought more of the potatoes, possibly.

885 Q. You knew more about the value of potatoes than you did about real estate?

A. Very likely.

Q. Is not that perhaps the case now?

A. I am willing to submit that to the judgment of other people. I am not going to answer that question, if you will excuse me.

Q. What is your process of arriving at the value of property

when you come to appraise it; what are the data on which to base an opinion?

A. The use that can be made of it.

Q. Anything else?

A. The condition of the market.

Q. Anything else?

A. That was about all that was essential to consider, I think, in appraising a piece of property.

Q. How do you arrive at the condition of the market?

A. By the sales, generally, and the demand for property, the apparent demand for it. I have sold some other property in that neighborhood from time to time, and I find there is very little selling now or has been in the last few years back; very little.

Q. Is not the real data on which an expert bases his opinion his knowledge of what other property has sold for in a given locality?

A. Not necessarily. If he made the sales himself and knows positively and can so testify that a sale was made at a certain price, that may be fairly considered to influence his judgment, but hearsay, having heard from somebody else——

Q. (Interposing.) I am not talking about hearsay.

A. I could not base my judgment upon those without knowing positively that they were facts.

Q. My question did not embrace anything of that kind at all. It was simply as to whether knowledge of what other people sold for in a given locality was not the proper ground upon which an expert would base his opinion.

A. That is a matter of opinion, purely and simply. That might be your opinion, but I do not know that it is necessary for me to confirm it.

Q. I am trying to get from you some information as to how you arrived at your opinion in order that the court may understand your way of reaching an opinion.

A. Now, let us get right down to business. We will take this property at $4 a foot. It would cost about $25,000, between $25,000 and $26,000, for that site at $4 per foot.

Q. One moment.

A. I am answering your question.

Q. No; you are not. I want a direct answer to my question.

Mr. DARLINGTON: I think the witness should be allowed to proceed without interruption.

Mr. KEANE: I do not want the witness to take occasion, by evading an answer to my question, to spread upon this record a lot of statements that are entirely uncalled for. I desire an honest, straightforward, responsive answer to my question.

The WITNESS: That is what I have given you.

Mr DARLINGTON: I object to the haranging of counsel, and I submit if he wants his question answered the witness can answer it; if he does not, the witness need not do so.

(Question repeated.)

886 A. I commenced to tell you and you broke me off and would not give me time to answer your question.

Q. I will put direct questions to you, then.

A. I want to answer that question.

Q. Now, answer this question: Do you place any weight at all upon the sales of other property in the neighborhood at or about the time at which you were called upon to appraise this piece of property?

A. I do not; not as bearing upon that particular property; no.

Redirect examination.

By Mr. DARLINGTON:

Q. You can state now what counsel asked you to state and would not allow you to do a moment ago, namely, your method of making the valuations.

A. My method in regard to that property would be based upon what it could be used for. Take that property at $4 a square foot. It would cost about $25,000 and some odd dollars—between twenty-five and twenty-six thousand dollars—in that neighborhood. Now, the interest on $4 per foot is $24 per year. In addition to that you must have the taxes in order to make a six per cent. per annum investment on the ground. Now, an improvement of not less than $40,000 should be put on that to make it pay the investment, to get something that would correspond with the lot and make it a paying investment upon which interest could be obtained on the value of the lot and the improvements together, and I do not believe that that lot could be taken at a greater price than that and utilized to pay five per cent. interest on that much money. That is the way I have arrived to my conclusion.

Q. You have said something about not attaching much importance to other sales in its relation to this property. What do you mean by that?

A. I mean to say in relation to that particular piece of property that the other sales near it might have been affected by other considerations than business considerations—that is, some man who had more money than brains. I have met some of those kinds or people who have bought property at very much higher prices than they were worth, and they have the property now. I have an instance on my hands now. I sold to Senator Cragin's wife in 1890, for $7.10 per square foot, lot 8, in square 112. I have never been able to sell it for her; her heir owns it yet. He cannot sell it now for what it cost.

Q. Have you made an effort to sell it for her?

A. Yes, sir; I have made an effort to sell it for her. I have a sign-board on it now and Mr. Wine has it. We have never been able to sell it. It is one of the cases simply where too much money was paid for it, and I could not base my judgment on the value of this property in 1896 by a sale I made in 1890, and there are many things which affect sales. I have been to five recent public sales,

and in every case it had to be bought in under the trust—no
887 bidders—and the question is, What is the condition of the market; what can that property be used for? and in that way I make up my judgment.

Q. How far are one or two sales in a locality a safe criterion of the value of property in that locality?

A. If another piece of property situated exactly like that had sold in 1896 for $4 a foot, I should certainly say that piece of property is worth $4 a foot, because it can be used just the same as the other piece was. In other words, you may take that and make a five per cent. investment on it. I made two other sales in Nineteenth street, in that same square, one for $5,800—improved houses on both of them—and one for $5,500. I do not think those two sales would have much to do with the value of that corner. It may be a much lower price because they are not so well situated, yet, at the same time, I would not say that those sales would influence my judgment in fixing the price of this property.

Q. Is it or is it now true that one, two, or three individuals may pay fancy prices for individual lots without materially gauging or affecting the value of other property in the same locality?

A. That is true.

Q. You have stated that you have not only negotiated sales but loans upon real estate?

A. Less than a month ago I negotiated a loan of $3,600 on lot 9, in this same square, adjoining the alley fronting Q street.

Q. What I wish to ask you is what in April, 1896, would have been a safe loan on that property—how much would you, in your opinion——

A. (Interposing.) I should not have risked more than fifteen to sixteen thousand dollars as a loan upon that property.

Q. I omitted in my direct examination to ask you a question which I meant to, and that is, what were the relative real-estate conditions as to price or value in 1890, 1891, 1892, and along there as compared with 1896?

A. In 1891 and 1892, along there, property was selling not only in that locality, but in all localities that were on the boom market, and property was selling well in most localities. There were a good many sales being made in all parts of the city.

Q. How was it in 1894, 1895, and 1896?

A. Things were dull during that time. In fact, since 1894 they have been very dull, and sales have been very slow.

Q. How, in your opinion, did that altered condition affect the value of real estate in this locality?

A. I should say that prices have generally declined fully from a quarter to a third. That is my experience.

Q. Now, with reference to this particular locality, what, in your judgment, has been the effect of these altered conditions?

A. To make the sale of property very, very slow.

Q. And what effect upon the value?

A. Proportionately, and there is more of it offered. There is a

great deal of property offered for sale in that section. I have some to sell, if anybody wants to buy.

888 Redirect examination.

By Mr. DARLINGTON:

Q. You have been asked about the sale of the Page corner, at New Hampshire avenue and R street. Do you know anything of the sale recently made at the corner of New Hampshire avenue and S street to Maury Dove?

A. I think I heard of that sale. I do not know anything personally about it.

GEO. W. LINKINS.

Sworn to and subscribed to before me this 20th day of May, A. D. 1898.

ROB'T L. MILLER, *Examiner.*

JOHN A. HAMILTON, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. DARLINGTON:

Q. How long have you lived in Washington?

A. Since 1852.

Q. During that time to what extent and how long have you been interested or concerned in real estate in this city?

A. I never was in the real-estate business. I only handled a little real estate. I was in the grocery business up to 1886.

Q. To what extent and for what length of time have you been a purchaser and owner of real estate here?

A. Since 1881.

Q. You first became a real-estate owner in 1881?

A. Yes, sir. I will take that back. I bought my residence in 1870.

Q. Since 1870; can you tell us, in a general way, the extent you invested in real estate in Washington?

A. In 1881, when I was in the grocery business, we bought property on Pennsylvania avenue, No. 626.

Q. The old Barbour & Hamilton establishment?

A. Yes, sir.

Q. Have you any connection with the Washington Loan & Trust Company in this city?

A. Yes, sir.

Q. What?

A. I am a director there. I belong to the valuation committee and executive committee.

Q. How long have you been a member of the valuation committee of the Washington Loan & Trust Company?

A. I think since 1893 or 1894; I will not be positive about it.

Q. Can you tell us, of course, generally, to what extent in that

capacity you have been concerned in the valuation or appraisement of real estate for parties in this city?

A. I have valued property all over the city almost every week since that.

Q. Can you give us approximately the volume of loans that have been made upon your appraisements?

A. I guess several millions.

Q. In what parts of the city have these appraisements been made?

A. Almost all over Washington.

Q. Who were the other members of the committee?

A. Mr. Wine and Mr. Fox was at one time, but he is not now.

889 Q. Do you know the property at the corner of New Hampshire avenue and Q street, the northwest corner?

A. Yes, sir.

Q. Lots 1, 2, 3, and 66, in square 134?

A. Yes, sir.

Q. Have you been asked at any time by any one to give an estimate of what that property was worth in 1896?

A. Yes, sir.

Q. At whose request did you make this?

A. Mr. Wine's.

Q. What, in your opinion, was that property fairly worth in April, 1896?

A. I think I valued that at $5 a foot.

Q. At what kind of a sale?

A. Private sale.

Q. Assuming that there were about 6,000 feet of ground in it, what was the amount of mortgage or loan which, in your opinion, could have been obtained upon it at that time?

A. About $13,000.

Q. I do not think you understand my question.

(Question repeated.)

A. If it were valued at $5 a foot we would loan on it about $15,000. I do not think there are quite 6,000 feet in it, though.

Q. What was the margin required by your company in loans on unimproved real property?

A. Fifty per cent.

Cross-examination:

Q. Do you know how many square feet that property contains?

A. Pretty nearly 5,300 and, I think, 87 feet, or it may be less than that. It is between 5,300 and 5,400. I think it is 87 feet, but I will not be positive about that, or it may be 37—something of that kind—but I think it is 87.

Q. When you make appraisements as one of the committee on valuation of the Washington Loan & Trust Company, do you not inform yourself of how many square feet there are in the property on which a loan is applied for?

A. We generally have that on our applications.

* * * * * * *

Q. Now will you kindly state the process by which you arrive at your opinion of the value of real estate? What are the data that you are governed by when you attempt to appraise real estate?

A. It is the surroundings and the best advantages which it can be used for.

Q. The best advantages it can be used for?

A. Yes, sir; used for flats or dwellings; the best advantage it can be used for.

Q. If you are informed of what other property is selling for in the neighborhood, does that have any weight with ——

A. Sometimes it does.

Q. Is that according to the humor you are in, or what is it that governs that?

A. It depends altogether upon the location and the kind of improvements they are going to put up. If it is a school-house it will depreciate it, or if it is a negro school it will depreciate it more.

890 Q What would you say in regard to the relative value of the northwest corner of New Hampshire avenue and R street, where the Nelson Page house stands, as compared with the northwest corner of New Hampshire avenue and Q street, disregarding the improvements or houses erected upon the northwest corner of New Hampshire avenue and R street and appraising them both as vacant property?

A. I think if you take off one of these lots on Q and New Hampshire avenue, it would be worth equally as much as Mr. Page's, $6 a foot. It is a larger piece of ground.

Q. You think Mr. Page's property is worth more than this property?

A. It is a smaller piece of ground.

Q. How much ground did you say was in this northwest corner of New Hampshire avenue and Q street?

A. 5,387 feet, I think. I will not be positive about the 87 feet, but I think it is 87, and I think Mr. Page's is about thirty-nine hundred and something—nearly 1,500 feet difference. At six dollars a foot, that means $9,000, you see. The same thing which affects the Holy Cross property.

Q. How many feet did you say there were in the Page property?

A. 3,900 and something. I don't remember the odd feet. There are nearly 1,500 feet difference.

Q. You mean nearly 1,500 feet more than the Page property?

A. Yes, sir; but if you make three lots of that Q and New Hampshire Avenue property, the corner lot would be $7 a foot at one corner, but it would depreciate the others. The others would not be worth as much money. That is the way we have to value property. The smaller the piece of ground is the more per foot it brings.

Q. What would you consider this property on the northwest corner of New Hampshire avenue and Q street to be valuable for—residence purposes?

A. Yes, sir; residence purposes.

Q. Single residence or several residences?
A. Either. You can put three residences there or one.
Q. Which would give it a peculiar value?
A. I think if some wealthy man like Leiter would buy it, it would be worth more to him. For a smaller residence I do not think they could afford to pay that much.
Q. Would you consider a piece of property of that kind would be such as a man would put up several residences upon?
A. You can put up three right nice residences there.
Q. How many lots are there?
A. You can make three in subdivision.
Q. Are you not aware there are four lots there?
A. You can make four lots there.
Q. Are you not aware that you are totally mistaken in the number of square feet there are in that property?
A. I may be; I will not be positive of that. It is a triangular square, and I did not figure it out very accurately. It is not exactly a triangle, but it has a peculiar shape.

Q. Which property would you consider the more valuable
891 per square foot, the property at New Hampshire avenue and Q street or property at New Hampshire avenue and R street?

A. As I say, if you cut off the corner and put up a fine residence, that would be more valuable. If you take the whole together, I think the other corner would be. It is a smaller property and would cost more money.
Q. Do you not know it has four lots?
A. It may be five.
Q. You do not even know that?
A. I think it has 5,387 feet of ground. The plat book will show that.
Q. Will you refer to the plat book and inform yourself, with your counsel's permission, of the number of feet there are there?
A. (After referring to plat book.) 6,367. There is one more lot on it than I thought there was.
Q. How many square feet are there there?
A. That does not make it any better.
Q. How many square feet are there there?
A. 6,367.
Q. And how many feet is the total frontage of it on both streets—112 feet 1 inch, is it not?
A. Oh, no. It is 65 feet 7 inches on Q street.
Q. And on the other?
A. 46 feet 6 inches.
Q. What is the sum of those; a total frontage over 112 feet, is it not?
A. 113 feet 1 inch, I think. There are more feet there than I thought there were. I think——
Q. So that 6,367 square feet would not be too large for a fine residence, would it?
A. If you had a Leiter it would not. We do not have many of those around here.

Q. What connection has Mr. Warner with the Washington Loan & Trust Company?
A. Director; formerly the president.
Q. And when did he cease to be president?
A. I think it was 1894.
Q. What were the circumstances that led to his resignation?
A. I do not know. He said he was tired of it and wanted to attend to his own business. I think that was his reason. He had large real-estate business.
Q. Do you not know the real facts why Mr. Warner resigned from the presidency of the Washington Loan & Trust Company?
A. Only from what I have heard.
Q. Do you know of your own knowledge?
A. No, sir.

Redirect examination.

By Mr. DARLINGTON:

Q. Were you a member of the board of directors of the Washington Loan & Trust Company at the time Mr. Warner resigned in 1894?
A. I do not know whether I was there or not.
Q. I ask you if you were a member of the board?
A. Yes, sir.
Q. Did you ever know or hear of any reason for his resig-
892 nation than that you have assigned?
A. None in the world except the press of his own real-estate business.
Q. Do you know whether an effort was made to have him reconsider and retain the presidency?
A. It was.
Q. Do you know when his resignation was accepted some months' salary was voted him?
A. Yes, sir; two or three months; three months, I think.
Q. Do you know when his resignation was accepted that the board voted a portrait of him should be painted and hung up in the institution in his honor?
A. Yes, sir.
Q. In your opinion, please state what the Page property was worth in the spring of 1896.
A. It was not worth $6 a foot, I do not think, at that time. The corners below there I know have sold within a year for less money—equally as good corners.
Q. Do you know anything about the sale of the Dove corner, at 18th and New Hampshire avenue?
A. Three dollars and a half.
Q. Is that an eligible corner?
A. Nothing finer on New Hampshire avenue.
Q. How were the improvements at that time?
A. Nothing on the corner there.

Q. How were the improvements at that time in the vicinity—the opposite corners there?

Mr. KEANE: Note my objection to the character of these questions put to the witness on redirect examination.

A. I think they are good.
Q. Do you know the residence of George E. Hamilton?
A. Yes, sir.
Q. What kind of a structure is that?
A. Very fine.
Q. How is that related to the Dove corner?
A. A very short distance across. I think that sold for even less than Mr. Dove's.
Q. Do you recall what there is at the northwest corner of S and New Hampshire avenue—whether it is a building lot or a park?
A. I think that is vacant ground, is it not?
Q. Yes; but do you know whether that is a park or public reservation?
A. There is a little park runnnig in there; yes, sir; right across from the Concord flats.
Q. As I understand you, the area of this property at New Hampshire avenue and Q street is a thousand feet larger than you thought it was?
A. Yes, sir.
Q. In view of that fact, what do you consider the fair market value of that property?
A. I think not over $4.50 a foot. I was not under the impression that it was larger.
Q. At what kind of a sale?
A. Public sale.
Q. What kind of a sale do you say?
A. Excuse me, I should have said private sale.
Q. Assuming that the New Hampshire Avenue and Q Street property in question was on the market for immediate sale in April, 1896, what is your opinion as to the value which might originally have been accepted?

893 Mr. KEANE: I again object to the character of these questions on redirect examination.

A. In April, 1896, if there was an immediate sale, I do not think at a forced sale it would have brought even $4.50.

Mr. KEANE: I object also to the character of the questions as irrelevant and immaterial.
The WITNESS: All that is fancy property there, and you have to wait for a purchaser.

Q. Do you know the dimensions of this Dove lot?
A. No, sir; not exactly. I know it is a very pretty lot, though. It is nearly as large, I think, as Mr. Page's.

Recross-examination:

Q. How about the southeast corner of New Hampshire avenue and S street?

A. That is a fine residence. This is all built up here now (indicating between New Hampshire avenue and S street). Here is a lot on New Hampshire avenue near Q, No. 143, running through to Corcoran street, two fronts. I think that lot can be bought today for $3.50.

Q. This is New Hampshire avenue and R street you are talking about?

A. I say this lot was offered——

Q. What lot are you talking about?

A. Lot 143, in square 155.

Q. You think that property was worth $3.50 a square foot?

A. I was present when it was offered at that price. A party told me it could be bought now for that; I will not say positively it can be.

By Mr. DARLINGTON:

Q. You say the lot you have last spoken of was offered at $3.50 a foot?

A. Yes, sir.

Q. Did anybody buy at that price?

A. No, sir.

Q. It was offered, but no takers.

A. Yes, sir.

JOHN A. HAMILTON.

ALBERT A. WILSON, a witness produced on behalf of the defendants Warner & Wine, being first duly sworn, was examined, and testified as follows:

By Mr. DARLINGTON:

Q. How long have you lived in this city?

A. Fifty-eight years.

Q. You are ex-Marshal Wilson?

A. Yes, sir.

Q. You twice held the office of marshall of the District of Columbia?

A. Yes, sir; I twice held that office.

Q. Apart from your official duties, what has been your business?

A. I have been in real estate *nad* insurance since 1875, omitting the four years I served as marshall, two terms—eight years altogether.

Q. How many years were you in the real-estate and insurance business?

A. I went in the real-estate business in 1875, among the early ones.

894 Q. What has been your connection with the insurance business?

A. I have been connected with the insurance business since 1869.

Q. What company?

A. Firemen's Insurance Company, corner 7th and Louisiana avenue.

Q. In what capacity?

A. I have been president, I think, about 21 years.

Q. Please state whether your duties in connection with the insurance company also bore some relation to real estate.

A. Yes, sir.

Q. In what way?

A. In making loans.

Q. With what financial institution are you connected?

A. At present I am connected with the Washington Loan & Trust and the Firemen's Insurance Company. I have been connected with a great many others, but I got out of them, resigned; I had more than I could attend to—some of the best in town.

Q. Name some of those you have been in.

A. National Bank of the Republic, which was sold out—I was connected with that a number of years; the Real Estate Title Company, the Metropolitan railroad, vice-president of it ten or twelve years. When I was appointed marshal the last time I got out of all that.

Q. What is your relation to the Washington Loan & Trust Company?

A. I am a director in it.

Q. What other position do you hold?

A. I am a member of the executive committee.

Q. Any other?

A. No, sir.

Q. Who since the organizztion of that company have — trustees under deeds of trust and made all the sales connected with it?

A. John B. Larner and myself.

Q. I will ask you whether in your various capacities you have become and are familiar with real-estate values in this city?

A. In a general way. I do not consider myself a general expert by any means.

Q. Have you bought and sold real estate on your own account?

A. I have.

Q. Something has been said here about the Dove property at the southwest corner of New Hampshire avenue and S street. Do you know anything about the purchase of that lot by Mr. Dove?

A. I know what he told me.

Q. How recently was that sale made?

A. It has been a short time ago. I think it was made within six months.

Q. Do you know anything about the character of the lot?

A. It is a corner lot, an angular corner; a very pretty lot.

Q. Do you know anything of its frontage?

A. I think he has about 95 feet front, if I am not mistaken. I

think seventy feet at the corner and adjoining lot; he bought two lots, 95 feet.

Q. Ninety-five feet frontage on which lot?

A. New Hampshire avenue. I think it runs back, as that book shows, 100 and some feet on S street.

Q. Do you know what Mr. Dove paid for that corner?

895 Mr. KEANE: Objected to as hearsay.

A. I know what he told me.

Mr. DARLINGTON: I think the objection is a good one, and I think the record shows that Mr. Keane is pretending the contrary.

The WITNESS: I know from the owner that sold the lot to Mr. Dove——

Mr. KEANE: I object to that because I wish to have it accurate, and as Mr. Dove himself can be called, I would like to have it done.

Mr. DARLINGTON: I think he can be called.

Q. What, in your judgment, was the property at the corner of New Hampshire avenue and Q street, lots 1, 2, 3, and 66, worth in April, 1896, on the market?

A. I do not think they were worth any more than they are today.

Mr. KEANE: I object to the testimony of this witness upon the ground that it appears he is not an expert and says he does not claim to be one.

Q. What do you consider it worth today?

A. I think, to take the property as a whole, $4.50 a foot is a fair price for it, taking all the lots.

Q. At what kind of a sale?

A. At a private sale. It would not bring that much at public sale.

Q. You think it is worth that at private sale for what purpose?

A. For a private residence, I think.

Q. Do you consider that a fair value to a man who wants to build a residence or a man who wants to make an investment, buying and selling it?

A. I do not think there is much in it for investment at $4.50 a foot.

Q. Assuming in 1896 that property was on the market for sale under circumstances requiring an early or immediate sale. I mean assuming the circumstances of the then owner were such as to require an early sale. What do you think——

A. (Interposing.) Do you mean at public auction?

Q. What do you think it could have been sold for at a quick sale in 1896?

Mr. KEANE: Objected to because it is irrelevant and immaterial.

A. I doubt if it would bring $3.50 at public sale—that is, if it had to be sold.

Cross-examination:

Q. What did you find to be the character of that neighborhood?
A. The surrounding property opposite this (indicating) is first-class property, but the property in this square (indicating), a good deal of it is very poor property.
Q. In what square?
A. The square where this property is located.
Q. Is not this property on the northwest corner of New
896 Hampshire avenue and Q?
A. Yes, sir; I am speaking of this square 134. I say a good deal of property on that square is of a very poor character. For instance, beyond the Kidder house there are some old shells there.
Q. Are you talking about the northwest corner of New Hampshire avenue and Q street, lots 1, 2, 3, and 66, this corner here (indicating)?
A. Yes, sir.
Q. Do you know how many square feet there are in this northwest corner of New Hampshire avenue and Q street?
A. Yes, sir.
Q. How many?
A. To be exact I looked at the plat—6,367 square feet.
Q. And there is a total frontage there of about 112 feet?
A. On the two streets.
Q. It goes back, does it not, to an alley behind?
A. Two of the lots do, 2 and 3.
Q. There is an alley there of 10 feet, is there not?
A. Yes, sir.
Q. It has been testified here that the property on the northwest corner of New Hampshire avenue and R street was sold in the spring of 1895 for over $6 a square foot. How would you regard the condition of the market in the spring of 1896 as compared to the spring of 1895?
A. I would say that Nelson Page——
The WITNESS: Do you mean that particular piece of property?
Q. I mean in general.
A. I do not think there is any comparison; there was no piece of property sold at that time for a fancy price.
Q. As you have relieved your mind of that, please answer my question.
(Question repeated.)
A. The market would be a little better in 1895, taking that piece of property as a criterion.
Q. Have you no knowledge independent of taking that property as a criterion?
A. I have a general knowledge.

Redirect examination:

Q. You have been asked about the character of the improvements on the adjacent corners of this property; let me ask you

what is the character of the property on Q street, going west from this property?

A. That property is improved by moderate-priced houses as a rule.

Q. State how they compare with the improvements about which you have been asked on the corners.

A. No comparison whatever; those houses are the finest house in Washington—Whittemore's and Leiter's.

Q. The houses on the corners are among the finest in Washington?

A. Yes, sir; I think so.

Q. Can you give us any more definite idea of the character
897 of the improvements on Q street between New Hampshire avenue and 19th? I mean on the same frontage—Q Street frontage.

A. They seem to be what you might call moderately fair houses; nothing extraordinary; nice three-story bricks; there are no grand houses there.

Q. You stated something about there being some poor property in that square.

A. R street, near 18th, strikes in there just beyond the Kidder property. There are some houses sitting back in the yard, rather ancient.

Q. Some frame houses?

A. I think they are brick, but they sit back in the yard.

Recross-examination:

Q. Then you consider that this property of Nelson Page on the northwest corner of New Hampshire avenue and R street would not have been more valuable at the time he bought it had there been erected on the three corners which are vacant residences such as the Clover, Schneider, and Whittemore houses?

A. I think my opinion of the Nelson Page corner is that he paid a fancy price for it.

Q. Do you not know that does not answer my question?

A. I can answer a plain question, but you are going all around.

Q. I think that is a very plain question.

A. You asked me if that did not affect these houses.

Q. Do you consider that this property of Nelson Page on the northwest corner of New Hampshire avenue and R street would not have been more valuable at the time he bought it had there been erected on the three cor-ers which are vacant residences such as the Clover, Schneider, and Whittemore houses?

A. I think Nelson Page had more money than he knew what to do with when he paid the price he did for that corner. There is no comparison.

(Question repeated.)

A. No; I do not in that particular instance.

ALBERT A. WILSON.

Sworn to and subscribed before me this 20th day of May, A. D. 1898.

ROB'T L. MILLER, *Examiner.*

CHARLES W. FAIRFAX (recalled).

By Mr. DARLINGTON:

Q. Please state whether you have had any recent familiarity with the values of lots of ground in the vicinity of New Hampshire avenue and Q street.

A. Yes, sir; we recently had for sale a lot on New Hampshire avenue between Corcoran and R streets, 25 by 110, lot 144.

898 Q. How far is that from New Hampshire avenue and Q?

A. It is just a little over half a square; Corcoran is a little street between Q and R.

Q. Can you tell us at what price that property can be bought?

A. It is a lot 25 by 110; we had it for sale at $2.60.

Q. Did you find any purchasers for it at that price?

A. Yes, sir; we did succeed in selling it.

Q. At that price?

A. Yes, sir.

Q. How long ago was that?

A. That was about three months ago; two or three months ago.

Q. Can you give us any information in regard to any other lots of ground in that vicinity?

A. We have at the present time the southeast corner of P street and Hopkins place, a lot 22 feet 9 inches by 90, one single lot, which is a corner lot; we are authorized to sell at $5,500.

Q. How much per square foot would that be?

A. Less than $2.75.

Q. How far is that from New Hampshire avenue and Q?

A. One square to Dupont circle, and this is about a square west from Dupont circle, making about two squares.

Q. About the same distance from Dupont circle?

A. Yes, sir; just about the same distance from Dupont circle.

Q. Have you any other property in that vicinity?

A. Yes, sir; we have now lots on P street between 17th and 18th, north side, lots that we can sell single, twenty by ninety-seven or 95, whatever the depth might be; we are authorized to sell at $2.25.

Q. Have you succeeded in getting a purchaser for those lots?

A. We have not succeeded in getting a purchaser; we have had them for sale two or three or four months.

Q. How far are they from New Hampshire avenue and Q street?

A. About two squares—a little over a square and a half; yes; a little over a square and a half.

Q. How far from Dupont circle?

A. Not quite the same distance from Dupont circle as it is from this particular property.

Q. This lot on New Hampshire avenue that you sold at $2.60, you say, is within half a square of New Hampshire avenue and Q?

A. No; a little over a square; it is about half a square from the

northern point of this property. Corcoran street is a street running in between Q and R. It is, I think, about the third lot from Corcoran street.

Q. Can you tell us the difference in value between a corner lot and an inside lot in the same square?

A. If they be lots of the same size and the corner lot of a width not greater than 25 feet, I should value the corner lot one-fourth more per square foot than the adjoining inside lot.

Q. What effect on that increased value of a corner lot has a greater area than that you have described, if the corner lot is very large?

A. I would not regard it as a whole as great a value as if it were smaller.

899 Q. What, in your opinion, has been the change in the value of real estate in that locality between April, 1896, and the present time, if any?

A. I do not think there has been any great change except some sales that may have been made in there since that time which may have impressed the owners as being a little more, but, as far as the actual value is concerned, I do not think it has been changed.

Q. You consider the market value about the same now as at that time?

A. Yes, sir; I think the market value is about the same now as at that time.

No cross-examination.

CHAS. W. FAIRFAX.

Sworn to and subscribed before me this 21st day of May, A. D. 1898.

———.

LOUIS P. SHOEMAKER, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. DARLINGTON:

Q. You are a resident of this city?

A. Yes, sir.

Q. And have been for how long?

A. I was born in the District of Columbia.

Q. What familiarity in real estate have you enjoyed?

A. I have been in the real-estate business since 1876?

Q. Engaged in transactions of what character?

A. General real-estate business—buying and selling property and negotiating loans and collecting rents.

Q. Have you also purchased and sold property on your own account?

A. Yes, sir; when the market was active I was speculating in real estate—bought and sold.

Q. Without inquiring too particularlt into your private affairs, would you object to telling us about the extent of your real-estate holdings in the District of Columbia?

A. I have property in the city—a large lot up on New Hampshire avenue, at the corner of Riggs and New Hampshire avenue—a triangular lot, which I bought in 1890, and still hold it, and downtown business property on G street.

By Mr. KEANE:

Q. Which corner of Riggs and New Hampshire avenue?

A. On the southwest corner of Riggs and New Hampshire avenue—lots in square 153.

Q. Lot 69, I presume?

A. Lots 69, 70, and 71. Then the most of my holdings otherwise are out in the immediate suburbs of Meridian hill, Lanier Heights, and out at Washington Heights, and I carry property in the country to a very great extent.

900 By Mr. DARLINGTON:

Q. Are you familiar with the property in controversy here, lots 1, 2, 3, and 66, in square 134, at the northwest corner of New Hampshire avenue and Q street?

A. Yes, sir; I have seen it and examined it and am familiar with the general surroundings. I looked over the property.

Q. If you were asked to form any opinion and to give any testimony as to its value, please tell us by whom you were so asked.

A. Mr Warner spoke to me about it, I think, within a month. That was the first time my attention was particularly directed to this particular property.

Q. Have you been spoken to about it more recently?

A. This gentleman; I do not recall his name (pointing to the solicitor for the complainant).

Mr. KEANE: Mr. Keane.

A. (Continuing:) Mr. Keane and this lady came to my office to talk to me about it, and I told them that I understood they were summoning witnesses just as Mr. Warner was as to the value of the property; I do not know that they stated that to me; and they not knowing that Mr. Warner had stated anything to me about it or me to him, they asked me what I thought of the property, and I told them that I had been spoken to about it, as I supposed, by parties on the other side, and had promised that I would give my opinion of the value of it, and therefore I thought that I could not very well be of any service to them.

Q. What, in your judgment, was that property worth in April, 1896?

A. I bought my ground at $3.50 a foot, and I think this ground is worth about a dollar a square foot more than mine, by reason of its location. I think if I were buying and had the two properties in view at the time of purchase that I would have been willing to pay almost, if not, that difference in the properties.

Q. Any more than that?

A. No, sir; hardly as much, because I think my judgment is that a person owning property where mine is located, at a difference of about a dollar a foot, which would be seven or eight thousand dol-

lars, that there would be a chance of getting a profit out of that ground at three dollars and a half quicker than further down at four dollars and a half. Still there is an intrinsic value, a difference which is equivalent in intrinsic value between that property and mine, because the improvements are more extensive around it and it is further downtown and the like; but for speculative purposes I would rather have the upper property.

Q. When did you make your purchase?

A. In 1890 or 1891.

Q. What can you tell us as to the relative market value of this property on New Hampshire avenue and Q street or New Hampshire avenue and V in the year 1891 and the year 1896?

A. The relative value between this property?

Q. Take both properties.

A. My property and theirs?

Q. Yes. What I want to know is the relative difference in value, if any, of those properties in 1890 and 1891, on the one hand,
901 and 1896, on the other.

A. My property is not on V street. It is at New H-ampshire avenue and Riggs —, about a square and a half beyond the property now in litigation.

Q. Correcting my question in that regard, what I wish to know is what change in the market value of the properties in that locality there was between the time when you bought your property and in April, 1896.

A. I do not think either property is worth as much or would bring as much in the market, and I think the relative values between the two properties is both the same.

Q. You do not think either property would bring as much in 1896 as it would in 1891?

A. I do not think so. That is my judgment. I have made some effort to sell mine, but that is a condition of affairs that exists with reference to all property.

Q. Can you tell us anything about the custom in this city, where property is bought by two or more persons for their common account and for investment and where they are both married men, in regard to taking title in the name of a third person?

Mr. KEANE: Objected to as immaterial, irrelevant, and incompetent.

A. It is a practice that is indulged in to a considerable extent, I think. I know I do that myself. There is a young man who holds now half a dozen pieces of property; holds the title of that property for me. I have deeds back for it, some of which I have recorded and some not, some declarations of trust, merely done for the purpose of facilitating business transactions. I have no other motive in it in the world—not the slightest—except to facilitate business.

Q. Outside of your own transactions, can you tell us whether or not it is an unusual custom for persons engaged in the same line of business?

A. I have understood that it has been done.

Cross-examination.

By Mr. KEANE:

Q. Is it customary and usual where property is taken by a married man in the name of a dummy to suborn the perjury of the dummy and have him swear that he parted with value for that property and is the true owner, and that his broker was the person who in reality is the owner and the man who got him to act as the dummy?

A. What do you mean by a dummy? You do not mean a fictitious person?

Q. No; I mean the person whose name is made use of to take the title.

Mr. DARLINGTON: Enter my objection on the ground that it is too obvious to require specification.

A. I do not know of any such practice such as you have described that prevails.

Q. Is it customary and usual for a person who obtains the use of the name of a dummy in which to take the title to the property subsequently to make an affidavit in which he swears that the dummy is the true owner of the property and parted with value for the same and bought it through him, the said deponent, as a broker?

902

Mr. DARLINGTON: I renew the objection and invite the attention of the court to the course adopted by counsel for the complainant, not to elicit testimony in the case, but to gratify his propensities for abusing the parties to the suit on the record.

A. I am not familiar with any such practice. As I stated, I put my property in the name of a third person merely for the purpose of facilitating business. When I effected the sale of it I just secured a deed, and as a rule I secured a deed immediately and put the title in a third person's name and deposited that deed myself in my safe.

Q. Is it customary for a person who takes the property in the name of a dummy and a suit is brought against the dummy to have the deed thereof set aside as fraudulent; to defend the suit in the name of the dummy and to interpose an answer, sworn to by the dummy, which carefully conceals the fact of who the true owner is and puts forth the dummy as the true owner and represents the parties who are really the true owners as being merely the brokers in the transaction? Is that customary?

Mr. DARLINGTON: I must repeat my objection to this entire line of examination and give notice that I shall apply to the court to tax the costs to the complainant and to exclude the testimony.

A. That hypothesis must certainly be the outgrowth of some particular transaction. I do not know of any custom which would support it; not within my knowledge.

Q. Is it customary where a party knows that he is dealing with

a judgment debtor who has several judgments against him in another State and is in great haste to dispose of property not located in the State where the judgments are, and therefore not subject to the lien of those judgments, to take property in the name of a dummy, and to conceal the fact of their own connection with the property as the purchasers, and to represent themselves as the brokers and the dummy as the real party in interest who has parted with value for the property? Is that customary?

A. I am not familiar with any such custom; in fact, I could say——

Q. (Interposing.) Is it customary?

Mr. DARLINGTON: Finish your answer.

A. I was going to say that I am not familiar with any custom other than that which I have stated.

Q. Is it customary to request a person for the use of his name for the purpose of taking the title to property and to conceal from such person——

A. (Interposing.) Right there, which person do you mean? Do you mean the person——

Q. (Interposing.) And to conceal from such person who is
903 so requested for the use of his name the fact that the property concerning which he has to take title is property held by a judgment debtor in great haste to dispose of the same before the deeds thereof have even been recorded, and the title to which property the judgment debtor has only obtained a few days previously, the ink on his deeds being scarcely dry, and for which he has pretended to have exchanged other property worth $65,000, yet is ready and willing precipitately and in great haste, with judgments hanging over him, to dispose of the property, which he has only just received in this way for the mere trifle of $7,500, $500 whereof is to be retained as commissions by the said parties who are pretending to act as brokers for the dummy, the said parties also having the said property on their own books for sale for the sum of $55,000? Is it customary to conceal all these facts from the party who you ask to act as a dummy in order that you may take title in his name and conceal your own connection with the transaction; is that customary?

A. I do not know of any custom of that kind. I am not familiar with any such custom. The only thing I know in that connection which has ever been brought to my atte-tion was that people have been compensated sometimes. I never did it myself, but I know a number of cases where it has been done—to take a young man who is entirely irresponsible, whom you know, to take the title to property that is encumbered and assume obligations in reference to it and compensate him with some small amount—$5, $10, or $25—in the nature of a fee for doing so, and in those cases he might not be made familiar with any of the details of the transactions. He is irresponsible; he is compensated to assume whatever risk there may be in connection with it, and does it without being informed as to

the condition of the property or as to the encumbrances or details of the transaction.

Q. Is it customary for a party who has thus acted in securing title to property in the name of a dummy when the grantor, the said judgment debtor, who has thus disposed of property in this way, is on trial under an indictment for having obtained such property by fraud to suffer a clerk in their employ to proceed to New York, where the said judgment debtor and grantor is being tried for such fraud, and take the witness stand and swear that the said dummy was the real purchaser and parted with value for said property, and that his brokers were the said parties who were in reality the real purchasers; is that customary?

Mr. DARLINGTON: I suppose it is useless to do so for any present purpose, but I must enter my protest against what I think the solicitor for the complainant must know is a very great abuse of the right of cross-examination persisted in by him in this way, and I invite the attention of the court to it for such action as the court may deem proper.

A. As I have stated before——

Q. (Interposing.) I ask you if that is customary.

904 A. As I have stated before, such a statement of facts must be the outgrowth of a particular transaction. I do not think there is any custom to support it. I do not know of any.

Q. Is it customary where such judgment debtor and grantor has been convicted of the charge of obtaining the said property by fraud, and has been sentenced and is in State's prison serving out his sentence, and the fact comes to the knowledge of the complainant that the dummy, who in a sworn answer has thus been held out as the true purchaser of the property for value, is discovered to have been only a dummy, and the parties who were thus held out in said sworn answer as the brokers in the transactions are discovered to have been the real purchasers, and are thereupon made parties defendant in an amended and supplemental bill filed with leave of court, setting up newly discovered facts, where such newly made defendant and real purchaser was well acquainted with the said judgment debtor with whom he had said transaction by which he took the property in this way in the name of the dummy, to swear that he never had known or met the said judgment debtor or grantor before in his life until the time of this transaction; is that customary?

Mr. DARLINGTON: I object to the question and instruct the witness not to answer it. I will request the examiner, if it be insisted upon, to certify this record to the court to determine whether this line of conduct is to be tolerated.

Mr. KEANE (to the examiner): Also instruct the witness that he is not bound by any instructions from Mr. Darlington; that he is on his oath here, supposed to be an impartial witness and willing to testify to the truth and not supposed to be under any obligation to Mr. Darlington or liable to take instructions from him more than

myself, and that he is at liberty to answer all questions, and that it is his duty to do so.

A. Of course, I should have answered that question directly, as I did the other, if objection had not been interposed, and I would like to say that I am sitting here as an impartial witness. Had I not been requested first by Mr. Warner to appear I would have complied with your request to have come here, particularly in view of what you stated to me about Judge Wilson being interested in the case, and I thought I was coming here only for the purpose of testifying as to the value of the property.

The answer that I would like to make to that question is very similar to the one I made a while ago, and that is that I am not familiar with any custom that prevails with reference to the taking of title to property in the name of a third person other than that which I stated in my direct examination, and it seems to me that ought to be sufficient.

Q. You think that if your corner, instead of being located as it is, on a place which terminates at New Hampshire avenue and has only one corner at that junction, were at a junction of
905 three prominent streets, where there were five corners, and the other four corners were built on by superb residences of a costly character, that that would only make a difference of a dollar?

A. In my judgment, yes; I have tak*ing* those things into consideration in estimating the value.

Q. And if, in addition to all the facts to which I have called your attention, your corner also had the advantage of being a northwest corner, you think still that that combination of circumstances would fail to enhance its value beyond one dollar?

A. I think I have taken those things into consideration, and I am right familiar with the location of the property and things of that kind. I do not think today that one corner up there is really any more salable than another for speculative purposes. As I have stated in my direct examination, up the street might be more desirable for speculative property at a lower price than this property down here would be at a higher price. Still a rich man might come along and fancy your property and pay more for it, but we are now speaking of ordinary transactions.

Q. If, in addition to all these facts, we had a further element that your corner was in the immediate vicinity of Dupont circle and only separated therefrom by a short block containing the residence of Mr. Leiter and the residence of Mr. Whittemore, you still think that all these conditions would fail to enhance the value of that property more than one dollar?

A. Yes, sir; I think I have put a very liberal estimate on it, and a very good illustration exists at my place with reference to that. Mr. Page bought the corner immediately south of me, half a square, and paid six dollars a foot for it. I cannot get five dollars or four dollars for mine today. There is a house on that property, I suppose, which cost a hundred thousand dollars to build.

Q. Supposing the size of the Nelson Page property is 5,626¼ square feet and the size of the property on the northwest corner of New Hampshire avenue and Q street is 6,367 square feet, how would you estimate the comparative values of these two pieces of property, and which property would you consider the more valuable per square foot?

A. I would rather have the Page property, because it is not so large. I think this property is larger than is really necessary for one large establishment, and then when you go around on Q street and value the property as a whole, if you segregate it and take the New Hampshire Avenue part, with a reasonable frontage on Q street, you leave property which goes into the interior ground again. It is not worth more than two dollars and a half a foot.

Q. Which piece of those properties would you consider the more desirable for a handsome residence?

A. Taking the size into consideration, I prefer the Page property.

Q. How much more valuable would you consider the property at the northwest corner of New Hampshire avenue and Q, foot for foot, than the property at the northwest corner of New Hampshire avenue and R?

906 A. My property is a square above, and I made a difference of one dollar. I should make a difference of about half a dollar there.

Q. Did you ever meet Stephen A. Dutton?

A. No, sir; not that I know of. I know two Duttons. I know a family of Duttons here in Washington, but I do not know their first names, and I do not know whether these are the people or not; therefore I would not like to say I ever did. I do not know anybody by the name of Stephen A. D.

Q. Did you ever know Mr. Gallaher, an acquaintance of Stephen A. Dutton?

A. What is his first name?

Q. He is an acquaintance of Stephen A. Dutton. Did you ever know him as an acquaintance, Mr. Gallaher, who was an acquaintance?

A. No, sir.

Q. Do you know a Mr. Gallagher, who lives here in Washington?

A. No, sir.

Q. Have you a brother-in-law by the name of Gallagher?

A. Yes, sir.

Q. You have a brother-in-law by the name of Gallagher?

A. Yes, sir.

Q. Where does he live?

A. In New York.

Q. What is his name?

A. Luke is his first name. There are two or three of them there.

Q. Will you swear you never heard Luke Gallagher speak of Stephen A. Dutton?

A. I have not spoken to Luke Gallagher for several years.

Q. What does Luke Gallagher do—what business is he in?

A. I really could not tell you.

Q. What business was he in that you last knew?

A. The last business I knew of his being in he was a commission merchant.

Q. Whereabouts?

A. He had an office here in the city.

Q. In Washington?

A. Yes, sir.

Q. How long ago was that?

A. That was seven or eight years ago.

Q. What year, the best you can recollect?

A. That is about as near as I can come to it, seven or eight years ago; probably longer. It may have been as much as ten years ago.

Q. Does he ever come to Washington?

A. He was here, I think, within a year, but I did not see him.

Q. Has he ever had anything to do with real estate?

A. Not to my knowledge. He never had anything to do with it in connection with me. I do not know of his ever having anything to do with real estate in Washington.

Q. What was the occasion of his being here at the time you mentioned last?

A. I do not know of any occasion for it. He came here, and I understood he had a house and lived up on Capitol Hill. That is all I know about him. I did not have any talk with him.

Q. How long did he live there?

A. A few months, I think; not very long.

Q. When was that?

A. Within a year. It seems to me it was last fall.

907 Q. And he is your brother-in-law?

A. Yes, sir.

Q. Did he not call to see you?

A. No, sir.

Q. Did you not call to see him?

A. No, sir. I do not say he was not at my house, but he was never there while I was at home.

Q. Are you on speaking terms?

A. Yes, sir; I have no reason to be otherwise.

Q. How did you learn of his presence in the city?

A. I heard it through Mrs. Shoemaker and her sister, who was here at the time.

Q. Is Mr. Luke Gallagher Mrs. Shoemaker's brother-in-law by marriage?

A. No; he is her brother.

Q. Oh, yes; I see; Mrs. Shoemaker is the sister of Luke Gallagher?

A. Yes, sir.

Q. Did Mrs. Shoemaker visit Luke Gallagher?

A. I think she went there; yes, sir.

Q. Don't you know Luke Gallagher was a friend of Stephen A. Dutton?

A. I do not. I have not spoken to him for several years.

Q. Will you swear that Luke Gallagher was not a friend of Stephen A. Dutton's?

Mr. DARLINGTON: I object. This is utterly inexcusable in view of what the witness has testified to already.

A. I certainly will, because I did not know Stephen A. Dutton and do not, and I do not know any of his friends. I do not know anybody that he knows that I know of here in the city. I would not like to say I do not know anybody that he knows, but I have never heard him say anything about that man, but, as I have said, I have not talked with him for several years.

Q. Will you swear you never heard Mrs. Shoemaker mention the name of Stephen A. Dutton?

A. I never did.

Redirect examination.

By Mr. DARLINGTON:

Q. You were asked whether or not the property opposite your lot on New Hampshire avenue was not waste land, and I believe you answered affirmatively. What do you mean by waste land?

A. I mean it is unimproved property, with the exception of a few fine houses dotted about. There are a great many lots that are entirely unimproved, but there are no undesirable improvements in that immediate neighborhood, and the fact that the lots are unimproved is, in my judgment, an advantage—that is, I would rather have it unimproved than to have an inferior class of improvements.

Q. You have been asked some hypothetical questions here in regard to a judgment debtor in another jurisdiction disposing of his property here quickly. Let me ask you whether if a man had been introduced to you through a responsible source and had stated to you that there was some judgments against him at his home which he was desirous of paying at that end, and had offered you this property at four dollars a foot, would that have excited your suspicions in any way?

908 Mr. KEANE: I object to the hypothetical question, not being supported but contradicted by the evidence.

A. It would not. Those judgments are not a lien here, and he could sell the property free and clear from that, I suppose, without question.

Q. Would there have been anything in the price offered which would excite your suspicion of anything improper or irregular in the transaction, the offer being four dollars a square foot for immediate sale?

A. When I was speculating in property I got it as cheaply as I could, and when it is offered at a low figure it is rather an inducement to buy.

Q. My question is whether an offer for immediate sale at four dollars per square foot would have excited your suspicion that there was anything irregular or improper about the transaction.

A. No, sir; I would not have bought it at that price.

Q. What do you mean by that?

A. I mean, judging from my experience, that I would not see any money in it. I could not see that there would be any speculation in it.

Q. One of the hypothetical questions which have been propounded to you—something has been said about this property being on the books of real-estate men at $55,000 for 6,300 feet, or something over $8.50 per square foot. What is your opinion as to the reasonableness of that property or the possibility of obtaining it?

A. An extravagant estimate of it.

By Mr. KEANE:

Q. What would you say about the custom and usage in regard to putting forward another person as a real purchaser and posing yourself as a broker, when in reality you were the real purchaser, and then taking commissions for selling property to yourself? Is there any such custom as that in Washington?

A. No, sir.

By Mr. DARLINGTON:

Q. Suppose the agent of an owner should offer you a piece of property at a given price and tell you that price was subject to a commission of three per cent., of which you could have two-thirds if you would take the property, would there be anything irregular or unusual if you bought it on those terms?

A. I think not. I do it.

Q. What do you think is the largest loan that could have been obtained on it?

A. I should say that $15,000 was about all that could have been borrowed on it. It is choice property, and you can borrow pretty close to the value where it is well located in that way.

By Mr. KEANE:

Q. Do you know that there is already upon that property a loan of $17,500, and that that loan was on that property at the
909 time, and that that property was taken from this judgment debtor by the defendants here through their dummy with that loan on that property and subject to that loan on that property? Do you know that?

A. No, sir; I am not familiar with those facts. A good many loans made more than five years ago are not good loans, by any means, today.

Q. But do you know that these very defendants took that property subject to the loan of $17,500?

A. No, sir.

Q. Would that have any effect upon your opinion of the amount of loan that could be obtained upon that property if it were a fact at the very time of this transaction the very broker who dealt with these very defendants with reference to this property had applied to Mr. John Joy Edson, president of the Washington Loan & Trust

Company, and that he had informed her that a loan of $25,000 could be obtained on that property?

A. No, sir. Was the loan made for that amount?

Q. There is my question, and if you will answer it I will be obliged to you, and am sorry to trouble you.

A. No; it would not affect me, coming in that way.

LOUIS P. SHOEMAKER.

Sworn to and subscribed before me this 21st day of May, A. D. 1898.

ROB'T L. MILLER, *Examiner.*

CHARLES C. DUNCANSON, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. DARLINGTON:

Q. Please state your occupation and how long you have followed it in Washington.

A. Real-estate auctioneer, stocks and bonds and personal property myself since 1873. Prior to that time I was employed by others.

Q. Can you give us some general idea of the number of sales of real estate you have made in Washington during those years?

A. It would take me some time to count them up.

Q. The aggregate value; can you approximate them?

A. I really could not. I sometimes have five or six sales a day, and seldom less than one of property ranging from $1,000 up to $50,000, $60,000, and $70,000.

Q. How long has your business been to that extent?

A. More so for the past fifteen years.

Q. Do I understand you have also been negotiating loans on real estate from time to time?

A. I appraise a great many properties for the purpose of having loans, first loans.

Q. Are you officially the appraiser for any institution in this city?

A. I am, of the American Security and Trust Company.

910 Q. How long have you been one of its appraisers?

A. The American Security & Trust Company of this city, the United Security of Pennsylvania, located at Philadelphia; very often for the Massachusetts Life, and am called upon by outsiders in other parts of the country very often.

Q. How long have you been appraiser for the American Security & Trust Company?

A. Since it started.

Q. That has been about how long?

A. Somewhere about 1890; I am not certain.

Q. You refer to the American Security & Trust Company in this city, located on G street between 14th and 15th?

A. Yes, sir.

Q. How frequently have you made appraisements of property in the city for that institution?

A. Some days five or six appraisements and possibly some days none. I suppose they will average one a day.

Q. In what section?

A. All sections.

Q. How long have you been appraiser for this Philadelphia institution you have named?

A For the past four or five years. They were dissatisfied in regard to some loans they had made through other parties, and I believe their instructions to their agents here were to have Mr. Duncanson pass upon the properties.

Mr. KEANE: Objected to as hearsay, and I move that the answer be stricken out.

Q. Are you or not familiar with the real-estate values in this city?

A. Yes, sir; I believe I am.

Q. Do you know lots 1, 2, 3, and 66, in square 134, being the property in controversy here, and located at the northwest corner of New Hampshire avenue and Q street?

A. I am acquainted with it.

Q. Was your attention ever brought particularly to that property in any way?

A. Yes, sir.

Q. Please state how.

A. Not by numbers of lots, in the first instance, but simply by calling my attention to the corner. One afternoon, in coming from a sale in my carriage, Mr. Rheem and Mr. Wine being in the same carriage, I was casually asked in regard to my opinion as to the value of that corner. I answered them at that time, if my memory serves me right—I told them about $4.50. About two weeks or more ago I was asked by this gentleman here—I really forget his name——

Mr. DARLINGTON: Mr. Keane.

The WITNESS: Yes, sir; if that is his name, accompanied by Miss Godfrey—in regard to my opinion of it. I told him I would prefer making an accurate examination in regard to the property, and asked them if they would give me the description. Miss Godfrey, I think, wrote the description—lots 1, 2, 3, and 66, in square 134.

Q. What did you do?

911 A. I would state that they said they would like to have my testimony that afternoon, if I recollect correctly, at three o'clock. My answer was that it was impossible; that my business was of such a character that I had to work at it the day preceding for the day ensuing, but I would endeavor to look at the property that afternoon or the next morning. I went and looked at it and made an examination of it.

Q. What, in your opinion, was the fair market value of that property in April, 1896?

A. I think from $4.50 to $5 would be a very fair price for it.
Q. At what kind of a sale?
A. At a private sale. I doubt whether I could get that at auction.
Q. At a private sale to a customer purchasing for what purpose?
A. For the purpose of a private residence. It is hardly susceptible for subdivision for several residences.
Q. What, in your opinion, was a fair realizable market value for it in 1896, sold to persons who were buying for investment or speculation?
A. My experience for speculation and investment of property of that character is that they usually eat themselves up in the interest and charges prior to a sale.
Q. Do you think it could have been sold at the price you have named to one who was buying, not for the purpose of a residence, but as an investment with a view to sell again?
A. I should have given considerable thought to the matter prior to paying that amount for it myself.
Q. Were you ever applied to for a loan on this property?
A. I have no recollection of it.
Q. Do you know Mrs. Mussey, a member of the bar here?
A. I am acquainted with her.
Q. Do you recall whether or not she applied to you for a loan on this property in the spring of 1896?
A. I do not.
Q. You do not recall that if it ever happened?
A. I do not. She may have possibly have done so.
Q. Do you know house No. 1706 Connecticut avenue?
A. Yes, sir.
Q. Did you ever at any time offer that property for sale?
A. I did.
Q. How long ago?
A. I think within the past two years.
Q. At whose instance?
A. Mrs. Godfrey.
Q. Do you recollect what your highest offer for it was—highest bid?
A. I think $12,800.
Q. What, in your opinion, is it worth?
A. If my memory serves me correctly, she was willing to let it go for very little more than that at that period.
Q. What is your opinion that it is worth?
A. I would not pay that amount for it.
Q. I omitted to ask you whether you submitted your estimate of value to Mr. Keane or Miss Godfrey.
A. I cannot say I submitted it. I think I had an engagement with them the next day to come in about 12 o'clock or so. They came in shortly before one, and I happened to be there, and walked back into the office, and Mr. Keane was telling me or at-
912 tempted to tell me in regard to the testimony in this case. I told him my experience had always been that there were two

sides to a question, and he as a lawyer ought to know it. Of course, I did not know anything about the case and did not care anything about it, and it would not affect my idea of the property, and I told him I did not think from what he had told me that others had testified as to the value that I would be of any benefit to him in testifying.

Q. He had detailed to you the testimony of other people as to values?

A. He told me what they said about it.

Q. Can you tell us briefly what it was he undertook to tell you about the case or about the defendants?

Mr. KEANE: All this is objected to as immaterial, irrelevant, and incompetent.

Mr. DARLINGTON: I submit it is not immaterial. I submit it shows the methods by which persons were attempted to be prejudiced against the defendants and with a view of influencing their judgment as to one of the questions at issue in it.

A. I do not think I have fully answered your other question.

Q. Please do so.

A. I was giving the conversation. This conversation occurred prior to my giving the amount at which I possibly would put the property on appraisement. I informed Mr. Keane and Miss Godfrey at the time that I could not place the value of it over $4.50 or $5 per square foot.

Q. Now, tell us concisely what Mr. Keane or Miss Godfrey said to you about this case and about these defendants in this connection.

A. Miss Godfrey said very little to me. Mr. Keane spoke in regard to a man named Dutton having taken great advantage over Mrs. Godfrey. I think you said Miss Godfrey.

Mr. KEANE: I think I said Miss Godfrey and not Mrs. Godfrey.

The WITNESS: Yes; probably; and that he had a lawsuit and had been sent to the penitentiary, and some other person had been sent to the penitentiary or jail; that Mr. Warner had been identified with them, and several witnesses had testified in New York that Mr. Warner was on intimate terms and had appeared in Dutton's office, and he told me also, I think, in regard to this property having been sold to a party in Mr. Warner's office, or a young man having taken title, Mr. Warner having received the commission, and virtually Mr. Warner and Mr. Wine were the purchasers. I think I told Mr. Keane that so far as that was concerned I did not care to hear about any one's troubles; I had other matters to attend to.

Q. Can you tell us whether it is or is not an unusual thing for several persons uniting in a purchase, especially if they are married men, to have the title conveyed to an unmarried third person?

A. It has become the universal custom of late to put it in the name of an unmarried man, some one in whom you have confidence, very often a clerk in your place of business, if you buy the property for the purpose of reselling. Very often we are able to buy property for the purpose of keeping it, and they place it in their wives' names.

913 Cross-examination.

By Mr. KEANE:

Q. What is the principal feature of the business in which you are engaged?

A. Selling real estate at auction and stocks and bonds at present.

Q. Do you also sell old furniture and things of that kind?

A. No, sir; I have not sold for some years, except when placed there by the United States marshal on seizures or a party desired my men to go to their houses for the purposes of selling them out or their place of business, stores, or where a person mistakenly sends some goods there, thinking I am still in that line, which are kept until sufficient goods accumulate for sale.

Q. You were formerly more occupied in that business than you are now?

A. Yes, sir.

Q. How long was that a prominent feature of your business?

A. The prominent feature of my business ever since I entered it for myself has been the real estate.

Q. And for whom do you seel real estate principally?

A. It would be almost impossible to name all the parties I sell for.

Q. Do you sell for private persons?

A. Private persons; yes, sir.

Q. And for firms?

A. Yes, sir.

Q. What kind of firms principally—real estate?

A. Yes, sir; lawyers, real-estate men, and agents.

Q. Will you name some of the real-estate firms for whom you sell real estate?

A. I have sold, I guess, real estate for almost every firm in Washington of any length of standing.

Q. Have you ever sold any for B. H. Warner & Co.?

A. Yes, sir.

Q. How frequently?

A. Very frequently.

Q. For how long a time past?

A. It would be hard for me to count the years.

Q. You mean it has been so many years you would have to count them?

A. I mean I cannot go back to a certain date to commence from; it has been a number of years.

Q. About how many years do you think?

A. I am safe in saying that I have sold for him, off and on, for the past fifteen years.

Q. When do you think was the last sale that you made for him?

A. Within six months.

Q. What was it?

A. I think he was trustee on a piece of property up on 20th street, if I remember right.

Q. Do you remember what it was?

A. If my memory serves me right, it was sold subject to an $8,000 trust for about $1,300.

Q. How much would you say was about the aggregate of the value of the property which you have sold during the past fifteen years for Mr. Warner or his firm?

A. I would not like — state any figure without an examination of the books.

Q. Do you think it would amount to $50,000?

A. Yes, sir; more than that, I should judge.

914 Q. Do you think it would amount to $100,000?

A. I have answered that I would not like to state without an examination of the books. I must decline to answer such questions.

Q. How long would it take you to examine your books?

A. For the fifteen years?

Q. Yes.

A. Possibly if I devoted my entire time to it, probably ten days. If I had other matters to attend to, possibly it would take me longer.

Q. Have the sales from year to year been numerous or few?

A. From year to year they have been numerous and increasing so far as I am concerned.

Mr. DARLINGTON: You mean the sales for B. H. Warner & Co.?

The WITNESS: No; he asked me about sales generally.

Q. Mr. Warner is a pretty good friend of yours, is he not?

A. I have others that are better, possibly.

Q. You have no reason to complain of him as a client, have you?

A. No, sir; I seldom complain of my clients. If they do not suit me, I stop, and if I do not suit them they stop.

Q. How much would you roughly estimate as the total amount of money that has been put in your pocket by reason of commissions you have earned in this way?

A. The same answer I made in regard to the aggregation of sales, the amount; it would be impossible for me to tell at the present time. I would further say, that being my private business, I do not see the right to question it.

Q. So you do not think it would be possible for you to give us a fair idea of the amount of commissions that you have earned from Mr. Warner and his firm for the last fifteen years by reason of auction sales you have made for them?

A. I do not say so.

Q. Well, that it would not be practicable for you to do it?

A. Unless ordered by the court to give it I would decline to give it in testifying, and again would state that it would occupy me a considerable time to ascertain it, which I do not think I am called upon to waste.

Q. Are there any sales that you have on hand now that you are about to make, either for Mr. Warner or his firm?

A. I have a sale advertised at present in which Mr. Rheem and Mr. Wine are trustees.

Q. What property is that?

A. A piece of property northeast, if my memory serves me right—on I street, I think.
Q. When are you to make that sale?
A. I think some day next week.
Q. Do you know Mr. James E. Fitch?
A. Very well.
Q. What is his standing as a real-estate man in Washington?

Mr. DARLINGTON: Objected to as incompetent, the evidence called for not being admissable.

Q. Do you know his standing as a real-estate man in Washington?
A. I do. I know my opinion of him, and I can also tell you what I think the community thinks of him generally.
Q. Will you kindly do so?
A. He is supposed to be a very honorable, upright real-estate man.
915 Q. What is his standing in Washington as to possessing expert knowledge of the values of real estate here?
A. Mr. Fitch is supposed to have such knowledge. He has a general knowledge of real estate.
Q. Is he connected with the American Security & Trust Co.?
A. He is coappraiser with myself.
Q. Do you know Mr. Charles Bell, of the American Security & Trust Co.?
A. I do.
Q. What office does he possess in that company?

Mr. DARLINGTON: I make the same objection, and will move the court to exclude all questions and answers of this character at the hearing.

A. President.
Q. What is Mr. Bell's standing as a real-estate man in Washington?
A. I do not think he has any.
Q. You would not consider that he had any standing in Washington as possessing know'edge of the values of real estate, would you?
A. That was not your question.
Q. Suppose you answer that question.
A. I would not consider Mr. Bell an expert in regard to the values of real estate in Washington, nor is he so considered by those having real estate valued as real-estate agents.
Q. How about loans that are made by the American Security & Trust Co.? Are any of them made by Mr. Bell ever without consulting the loan committee under him?
A. Seldom.
Q. Some are made, are they not?
A. Few and far between.
Q. Where Mr. Bell makes a loan without consulting the loan com-

mittee it would be upon his knowledge of the value of the real estate on which the loan is being made, would it not?

A. Yes; and that value would have to be considerably more than the amount of the loan. In other words, there would not be any question in regard to the value of the property any more than a private party going and making a loan on the property which he was satisfied in his own mind would bring considerably more at auction than the amount which he loaned upon it.

Q. You do not think that would require the exercise on the part of Mr. Bell of any judgment as to the value of the real estate on which he was to make the loan, do you?

A. Not such as being an expert in the sense in which it is usually used.

Q. Would it require the exercise of any judgment as to the value of real estate?

A. It would require the exercise of judgment for a man to transact business of any kind.

(Question repeated.)

A. My answer holds good.

Q. In other words, Mr. Bell has the power and authority to make loans for the American Security & Trust Co. without consulting the loan committee if he so chooses?

A. No; the rule is the opposite. The right to do so is sometimes exercised by Mr. Bell, and usually the executive committee, in connection with the appraisers, pass upon loans.

916 Q. Has not Mr. Bell the authority to make a loan if he chooses without consulting the loan committee?

Mr. DARLINGTON: All of this is under my objection, of course.

A. I do not know that there is any written rule.

Q. You say that Mr. Bell has done so occasionally?

A. Yes, sir.

Q. Do you mean to be understood that he has done so without authority or the power to do so?

A. I mean to say that he has done so by reason of parties coming in and no question in any manner as regards the excessive value of the property over the loan.

(Question repeated.)

A. I stated in answer to that that where such loans have been made they have always been laid before the executive committee and they passed upon them, and I doubt whether any loan has ever gone through its terminus, so far as the passing of money and taking the trust, without the executive committee having knowledge thereof, and with rare exceptions without the appraisers approving thereof.

Q. Is not the same true with regard to the executive committee where the loan committee have passed upon the value of the property?

A. Is what true?

Q. Don't you remember what you have just stated yourself without my repeating it?

A. You say whether the executive committee has the authority? The executive committee has the authority.

Q. Is it not true that where the loan committee pass upon the value of the property, still before the loan goes through to its terminus that it comes to the knowledge of the executive committee?

A. In almost every instance some few know.

Q. How long has Mr. Bell been president of the American Security and Trust Co.?

A. A little over three years, I think.

Q. Was he connected with the company before he became president?

A. As one of the directors.

Q. For how long?

A. Since its inception.

Q. How many years is that?

A. I think it was about 1890.

Q. And the American Security & Trust Co. is engaged, is it not, in making loans on real estate in Washington?

A. Hardly. That is part of their business.

Q. Still, you do not think Mr. Bell has any knowledge of real estate in Washington?

A. I did not say so.

Q. No knowledge such as would enable him to judge of the value of real estate?

A. Not as an expert.

Q. But you think you would have some respect for the opinion of Mr. Fitch if he appraised real estate in Washington, do you?

A. Generally; yes. In some instances he and I differ very materially. As a usual thing, he gives way to me.

Q. Is not your appraisal generally lower than his?

A. No, sir.

Q. Is your opinion usually higher than his?

A. No, sir.

Q. Your knowledge of real-estate values in Washington are derived principally, are they not, from auction sales of the same?

917 A. Auction sales have a great deal to do with my knowledge of real estate.

Q. Naturally, being a real-estate auctioneer, auctions would have a great deal to do with your knowledge of real estate, would they not?

A. That is what I said.

Q. Is Mr. Fitch a real-estate auctioneer?

A. He is not.

Q. Does his business consist in making private sales in real estate?

A. For parties when said parties place the price that they desire to get for their property.

Q. And not in making auction sales?

A. Not other than as a trustee.

Q. He never makes an auction sale personally as trustee?
A. Yes, sir.
Q. Does he not employ some one to do it?
A. We are his mouthpiece. He makes the sale.
Q. You put it under the hammer, do you not?
A. Yes, sir.
Q. Did you not understand that that was what I meant?
A. I only know your questions. You asked me to answer them, and I do generally.
Q. You have not any unkind feelings towards Mr. Warner by reason of his putting so much business in your hands?
A. It is not natural I should on that account. I know of no account why I should have any hard feelings.
Q. Quite the contrary, is it not? Your feelings are rather friendly for all the employment he has given you?
A. I will say right here that when I entered this witness chair I did it to tell the truth, the whole truth, and nothing but the truth, and the cross-questioning of Mr. Keane is evidently endeavoring to make me in the light of being favorably prejudiced to give testimony for Mr. Warner. In answer to Mr. Keane's question I will now say that I do not do the exclusive selling for the firm of Warner & Co., nor have I ever done the exclusive selling, and people who generally know me give me credit for having an opinion and mind of my own without being influenced absolutely by dollars and cents.
(Question repeated.)
A. I have answered. The latter part of it, I believe.
Q. Will you kindly answer my question?
A. If you heard my answer. I may have probably made a mistake of a word.
Q. Please answer my question.
A. My feelings have always been those of a friendly nature to Mr. Warner.

By Mr. DARLINGTON:

Q. Was Mr. Bell ever in the real-estate business that you know of?
A. I have no knowledge of Mr. Bell ever having been engaged in the real-estate business in Washington or elsewhere.
Q. To what extent, if at all, has the fact that you have been employed from time to time by Warner & Co. to act as auctioneer for them influenced your opinion as to the value of this property as Mr. Keane imply?

918 Mr. KEANE: Objected to as incompetent.

A. It has had no effect.

By Mr. KEANE:

Q. For whose opinion would you have the more respect in an appraisal of Washington real estate—that of Mr. James E. Fitch or that of Mr. Charles Bell?

A. I would consider Mr. Fitch as having the more general knowledge.

Q. You place greater reliance on the opinion of Mr. Fitch than that of Mr. Bell?

A. I do.

CHAS. C. DUNCANSON.

Sworn to and subscribed before me this 21st day of May, A. D. 1898.

ROB'T L. MILLER, *Examiner.*

ALBERT F. FOX, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. DARLINGTON:

Q. You reside in Washington?

A. Yes, sir.

Q. How long have you resided in Washington?

A. It will be thirty-five years on July 10 next.

Q. What is your present occupation?

A. Real-estate broker.

Q. Have you any other occupation or position?

A. I am president of the Columbia national bank.

Q. With what other institution have you recently been connected?

A. I was with the Washington Loan & Trust Co. until May 11, 1897, as director; on the executive committee and appraisement committee.

Q. Have you any relations with the Equitable Building Association of this city.

A. I was appraiser there from 1879 to 1881.

Q. How long were you an appraiser for the Washington Loan & Trust Co.?

A. About six years.

Q. Ceasing when?

A. May 11, 1897. I resigned at that time.

Q. What led to your resignation?

A. They exacted too many duties of me, and I simply could not give them attention. The best of feeling prevailed between the board and myself, but they simply had too much for me to do.

Q. What has been the character of the real estate in which you have been engaged, and for how long have you been so engaged?

A. Ever since I came to Washington. I entered the real-estate office of Joseph F. Kelly on July 10, 1863, and have been in that business ever since.

Q. How long for yourself?

A. 22 years on August 15 next.

Q. What class of real-estate business have you been doing?

A. General real-estate business.

Q. Buying and selling property and making loans?

A. I have.

919 Q. And collecting rents and things of that sort?

A. I have.

Q. Could you tell us approximately how much property you have appraised for the Washington Loan & Trust Co.?

A. I could not. I have no record whatever.

Q. Has it been several thousand dollars, several hundreds of thousands, or several millions?

A. It has been several millions, I judge, in the six years.

Q. As a real-estate broker, what have you had to do with the valuation of property?

A. In a general way; nothing special. I have been called in to settle disputes as to values of real estate.

Q. In making loans to your clients, what have you had to do with valuation of property—offering security?

A. I have made a great many valuations in that line, loaned a great deal of money for my clients. They have entire confidence in me, and hardly ever looked at the property. It is an exceptional case where they go beyond my opinion.

Q. In what parts of the city have you made appraisals, selling and buying property?

A. Over the city proper; very little in the country.

Q. Do you know the property situate at the northwest corner of New Hampshire avenue and Q street, known as lots 1, 2, 3, and 66, in square 134?

A. I do not know it by lots.

Q. Do you know that corner?

A. I know there is a corner there; yes, sir.

Q. Have you been requested by any one to consider that property, with a view to giving your opinion as to its value?

A. Not specifically. I was asked to come here by Mr. Wine to testify as to property at the corner of New Hampshire avenue and Q street, but he did not give me the dimensions or anything else.

Q. Do you know the dimensions?

A. No, sir; I do not.

Q. I will ask you to look at "Defendants' Exhibit Wilson No. 1," and you can compare that with the plat book which you have there, containing between 6,300 and 6,400 feet of ground, fronting 65 feet 7 inches on Q street and about 46 feet and 6 inches on New Hampshire avenue.

Mr. KEANE: I want to say in regard to this exhibit that unless some pro-ff is made that it has been drawn to a scale I object to it as incompetent. If it has been drawn to a scale, I have no objection to it.

Mr. DARLINGTON: The exhibit was filed yesterday without objection, and the commissioners' plats of it are identically those that counsel himself has used in interrogating witnesses.

Mr. KEANE: Yes; the commissioners are all right, but if it is offerred in evidence as a diagram thereof I am sure—and Mr. Dar-

lington cannot dispute it—there must be some proof that it has been drawn to a scale; otherwise it would make an erroneous impression upon the eye, and the lines, although designating correctly the number of feet, would not show correctly the proportions unless the drawing is to a scale. There can be no objection whatever to any
920 drawing being put in evidence representing this property where the same is drawn to a scale, but otherwise the objection is perfectly obvious.

Q. Have you now examined the lots on the Hopkins map of the city, Mr. Fox?

Mr. KEANE: I must add that unless Mr. Darlington gives some proof that this is drawn to a scale I will move its exclusion at the proper time.

A. I have.

Q. In your opinion, what were those lots worth in April, 1896, per square foot, their area being, as you will see, something over 6,300 square feet, and their frontage on New Hampshire avenue and Q street being what I have stated, namely, about sixty-five feet seven inches on Q street and forty-six feet six inches on New Hampshire avenue?

Mr. KEANE: I object to the testimony of this witness, not upon the ground that he is not an expert, but only upon the ground that his testimony shows that he has been unable to make any proper examination of the property such as would be necessary for him in order to give a fair and intelligent opinion, and until he does so I object to his testifying. I am perfectly willing he should be given ample opportunity to make a full and proper examination of the premises and then come here and give his opinion after he has done so.

Q. Have you seen this property?

A. Yes, sir; hundreds of times; thousands of times.

Mr. DARLINGTON: Now answer the question I just put to you.

(Question repeated.)

A. As a whole I would consider that ground worth from $4.50 to $5 a square foot.

Q. At what kind of a sale?

A. That would depend entirely who would want the property.

Q. I mean at public auction or private sale.

A. Oh, private sale. I do not think it would bring that at public sale.

Q. In giving that value you do so in reference to what kind of a purchaser? By that I mean a purchaser buying for his own use or a purchaser buying with a view to selling again.

A. A purchaser buying for his own use.

Q. What, in your opinion, would have been the fair market value of that property in April, 1896, to persons who were buying as investments and with a view to sell again?

A. I would not think of giving over $4 a square foot at that time for investment or speculative purposes.

921 Cross-examination.

By Mr. KEANE:

Q. At your appraisal of that property, how much of a loan do you think could have been obtained on it in April, 1896?
A. I would not have given over $15,000 on it.
Q. Are you aware that that property has $17,500 encumbrances on it?
A. I am not aware, except what I heard you ask Mr. Hellen yesterday.
Q. Did you know that the defendants here took that property subject to that loan?
A. Only what I heard the other day during the testimony of Mr. Hellen.

Redirect examination.

By Mr. DARLINGTON:

Q. How was the real-estate market in 1896 in regard to values as compared with that market in 1890? What I want to know is how did the prices compare in 1896 with 1890?
A. They did not begin to be near so high.
Q. At which period?
A. In 1896 as they were in 1890.

CHARLES EARLY, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. DARLINGTON:

Q. Please state your name, residence, and occupation.
A. Charles Early; 615 Fourteenth street northwest.
Q. That is your business location?
A. Yes, sir; real estate.
Q. Where is your residence?
A. No. 1603 Connecticut avenue.
Q. How long have you been engaged in business in Washington, and what line of business?
A. About fifteen years this past March; in the real-estate business.
Q. I suppose you have done the usual class of real-estate business?
A. I have done both a speculative business and a commission business and broker's business.
Q. What do you mean by speculative business?
A. I have bought and sold a great deal of property within the past fifteen years.
Q. On your own account?
A. Yes, sir.

Q. Are you a real-estate owner?

A. Yes, sir.

Q. To what part of the city have your transactions been confined principally?

A. Mostly in the northwestern section.

Q. Have you become familiar with values in that locality?

A. I think so.

Q. Do you know lots 1, 2, 3, and 66, square 134, being the northwest corner of New Hampshire avenue and Q street?

A. I know the location.

922 Q. Do you know the property?

A. Yes, sir.

Q. What, in your opinion, was that property fairly worth on the market in April, 1896?

A. I should say*k*, as we had a very dull market about that time, that that property could have been sold at about $5 a foot.

Q. At what kind of sale?

A. In what way do you mean, at public auction sale?

Q. Yes.

A. It probably would have brought that price if anybody should have wanted so large a lot in that section—if there happened to be anybody on the market at that time who wanted it.

Q. That is, if it was sold at auction and there was a bidder there who desired it, it might have brought that price, $5 a foot?

A. Yes, sir.

Q. What can you tell us of the supply of bidders of that kind at that time?

A. I think there were comparatively few bidders at that time and from that time up to this time for that class of property. I do not know whether you want me to suggest this or not, but I have a corner at Connecticut avenue and Q that I have been very anxious to sell myself that I own and paid $15,000 for, and I have not been able to sell it for anything like that money since.

Q. When did you buy it?

A. I bought it about five or six years ago.

Q. What price per square foot would the sum you have named be?

A. I paid a lump sum of $15,000 for it; I think there are 2,700 feet in it; you can make that calculation in a rough way yourself.

Q. How far from New Hampshire avenue and Q is this lot you speak of?

A. Just two blocks; but I will add that I bought that lot at that price at that time to protect my own premises, or I should not have bought it and paid so much for it.

Q. Do you know of a sale of a lot in the same square you speak of recently next the Coulter house?

A. I know a sale made there, but the exact price per foot paid I do not remember; it strikes me about $2.73.

Q. How does the property at Connecticut avenue and Q street compare with that of New Hampshire avenue and Q, in your opinion, as to values?

A. About the same value, except that the property at the corner

of New Hampshire avenue and Q has a very large area of feet, and therefore would hardly bring in proportion as much price, my lot being only 25 — on Connecticut avenue and 48 feet on the alley and 65 feet on Q street, which would give a very large frontage for a small area.

Q. For what price, in your opinion, could the property at New Hampshire avenue and Q street have been sold in 1896 by persons who were selling and buying for investment and speculation?

A. Very few people wanted to buy that priced lot at that time on speculation.

Q. Do you think it could be sold at $5 a foot to that kind of purchaser?

923 A. Probably to a person who had the money for investment; but you would have—as the boys uptown say, have to skirmish around and find a fellow who had that much money to invest.

Q. Do you think it could have been sold at as high a price to a speculative purchaser as one who desired it for his own use?

A. I do not know that it could.

Q. You have said that you yourself were engaged to some extent in buying property for investment. Would you have paid $5 for this property in 1896?

A. At that time if I had had some money in hand I think I should have bought that lot probably at $5 a foot myself. I should not have paid any more for it.

Q. What do you understand the area of this lot to be, New Hampshire avenue and Q street?

A. About six thousand feet, I think.

No cross-examination.

CHARLES EARLY (recalled).

Cross-examination.

By Mr. KEANE:

Q. It has been testified in this case by the broker who made the sale that the property on the triangle at P and 18th streets was sold in the fall of 1896 for $8 a square foot. I wish to ask you whether you consider that the condition of the real-estate market in the fall of 1896 was better or worse than it was in the spring of 1896. Could you answer that question?

A. I do not think I can exactly tell the difference in the conditions, but I will add that I consider that triangle in there sold for a very excessive price.

By Mr. DARLINGTON:

Q. Can you tell me what the custom is among real-estate dealers who are married men and who buy property for investment with respect to where they have the title vested?

A. I buy nearly all property for more than one reason in different people's names. I do not care about giving any notes, in the first

place, and, in the second place, I do not care to disclose all of my business to the public.

Q. Do you know whether or not that is a general custom among real-estate dealers who buy for themselves?

A. I think almost entirely among real-estate dealers.

Q. You speak of not wishing to give notes.

A. I should have said deed-of-trust notes.

Q. These sales are partly on credit and require the giving of notes?

A. Yes, sir.

Q. Or if notes are already upon the property there is the contingency that they may have to be renewed?

A. Yes; or the assumption of them, which I never liked.

924 MATTHEW TRIMBLE, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. DARLINGTON:

Q. You are a resident of Washington?

A. Yes, sir.

Q. What official position do you hold?

A. Assessor for the District.

Q. Assessor for the assessment of taxes on real estate?

A. Yes, sir.

Q. How long have you held that position?

A. Since March, 1890.

Q. About what ratio or proportion do the assessments for taxes in this city bear toward the market value of property?

A. That is a question that does not necessarily come under my jurisdiction. We have what is called a permanent board of assistant assessors, and they levy assessments. The present board, as I understand, have no definite rule. The law does not require them to establish any definite standard of valuation, but the board immediately preceding the present board did establish a rule. My best recollection is they would assess the property at what it would bring at a forced sale under adverse circumstances, and that meant 75 per cent. of the market value.

Q. How long has that rule been observed?

A. I do not know that the present board observes that rule. They have not approved or disapproved that rule. They are acting now, and will not make their return until next January. They have not published any particular rule of valuation.

Q. What rule, if any, obtained in April, 1896?

A. I think the present board made the present assessments.

Q. And are you able to tell us what ratio prevailed between the assessed value and market value?

A. No, sir.

Q. Can you tell us what was the assessment for 1896 on lots, 1, 2, 3, and 66, square 134?

A. I can by referring to our records.

Q. Have you the record?

A. I have a photolithographic copy of the record—the original record—here for convenience.

Q. Unless that is objected to, I will ask you to state what the assessment was.

A. What square?

Q. Square 134, lots 1, 2, 3, and 66.

A. (Referring to record.) Lot 1, I find, contains 991 square feet, and is assessed at $3 a square foot.

By Mr. KEANE:

Q. What square is that?

A. Lot 1, in square 134.

Q. What does it contain?

A. 991 square feet, assessed at $3 a foot, making for the assessed value of the ground $2,973 and for the improvements $2,300.

By Mr. DARLINGTON:

Q. Now, take lot 2.

925 A. Lot 2 contains 2,087 square feet, and is assessed at $2 a square foot, making $4,174. It appears to be a vacant lot.

Q. Lot 3.

A. Lot 3 contains 1,950 square feet, also assessed at $2 per square foot, making the total assessed value for the lot $3,900. That also appears to be a vacant lot.

Q. Lot 66.

A. Lot 66 contains 1,339 square feet, and is assessed at $2.25 a square foot, making $3,013 for the assessed value. That also appears to be a vacant lot.

Cross-examination.

By Mr. KEANE:

Q. What is that for?

A. For 1896 and 1897 and the present assessment. This assessment was for three years.

Q. Is that the last assessment?

A. That is the last assessment; yes, sir.

Q. Can you tell me for what year the taxes were based upon the assessments you have mentioned?

A. The year ending June 30, 1897. I think that is it. It is on the back of the book.

Q. For the year succeeding?

A. No, sir; commencing with what we call the fiscal year 1897—that is, the fiscal year commencing with July and ending with the following June. That is for the year ending June 30, 1897, for the present, and two subsequent years after that.

Q. So that the taxes for the year 1896 were not based upon this assessment?

A. No, sir.

Q. On what assessments were the taxes based for 1896?

A. Assessments for that year are the assessments made three years prior to that.

Q. What year was that?

A. I think that would come in with the fiscal year 1894.

Q. Have you got those assessments with you?

A. Yes, sir.

Q. Will you produce them?

A. I will. They are in a similar book to that (indicating), made up in the same way as that. This is for the fiscal year ending June 30, 1894; that is for 1893 and 1894 (indicating).

Q. Will you kindly state what the assessments were on which the taxes were based for the year 1896 in regard to lots 1, 2, 3, and 66, square 134?

A. For the year ending June 30, 1896?

Q. Yes.

A. From this record it will appear that lot 1, the same number of square feet as mentioned before, was assessed at $3.25 a foot.

Q. Just call out the same way you did before all the particulars.

A. Lot 1, containing 991 square feet, assessed at $3.25; value of land, $3,221; value of improvements, $2,500.

Q. Lot 2.

A. Lot 2 contains 2,087 square feet, assessed at $2.25 per square foot, making $4,696.

Q. Lot 3.

A. Lot 3 contains 1,950 square feet. I notice this is——

926 Q. (Interposing.) Please go ahead.

A. That is assessed at $2.25, making $4,388 *dollars.*

Q. Lot 66.

A. Lot 66 contains 1,339 square feet, at $2.50 per square foot, making $3,348.

Q. Will you kindly inform us regarding the assessed value of the northwest corner of New Hampshire avenue and R street according to the last assessment, being square 153?

A. According to the last assessment?

Q. Yes; square 153.

A. What lot?

Q. Lot 17.

A. Lot 17, in square 153, from this contains 3,916 feet, assessed at $2 a foot, making $7,832.

Q. And lot 18?

A. Lot 18, I judge from this, has been subdivided into other sublots. I do not find it here as an original lot on this book. Evidently it has been subdivided into other lots, and I cannot tell from this which other lots it is contained in. Lot 18 does not appear on here.

Q. Now, will you look at the assessed value of the same property, the northwest corner of New Hampshire avenue and R street, for the year 1896?

A. Sublot 17, 3,916 square feet, at $2.25 a square foot, making $8,811.

Q. How much per square foot?

A. $2.25.
Q. And lot 18.
A. That does not appear on this book either as such.
Q. Do you think lot 18 was not assessed that year?
A. It was assessed that year; yes, sir, but——
Q. Can you find how much it was assessed for?
A. Not from this book, because I would have to find out what sublots were made out of it.
Q. Could you do that?
A. I could in my office; yes, sir; find out what sublots were made out of original lot 18.
Q. Will you kindly do so, and furnish us with that information?
A. Yes, sir. You want lot 18?
Q. I want lot 18 for both years.
A. I will do so.
Q. Now, will you kindly look at square 135?
A. The last assessment?
Q. The last assessment first; the assessment subsequent to 1896, lot 1.
A. Lot 1 contains 13,646 square feet, assessed at $3.75 a foot, making $51,173; improvements, $8,000.
Q. Is that the Leiter property to which you refer?
A. That is the Leiter property; yes, sir; but you see Mr. Leiter also has——
Q. (Interposing.) Is that the property——
A. (Continuing:) —a portion of lot 2.
Q. Is that the property on which the Leiter mansion stands?
A. I think it is.
Q. Do you know of any choicer property for residence purposes in Washington than that?
A. It is a question of taste entirely.
Q. Will you look at the same square—135—lot 3?
A. I see that lot 1 does not include all the lots assessed in Leiter's name.
Q. I understand so.
A. It is only a portion of it.

927 Q. Simply confine yourself to my question. Will you look at the same square—135—lot 3, and tell me at what that is assessed.

A. Lot 3 is in six different parts. Which part of lot 3 do you wish?
Q. Are all five different parts assessed at the same rate or not, and, if not, at what rate?
A. They are assessed at different rates.
Q. I speak of lot 3.
A. There are five parts of lot 3.
Q. Are they all assessed at the same rate?
A. They are not all assessed at the same rate; a portion is assessed at $2.50 and the balance at $3.
Q. That is, four of the subdivisions known as lot 3 are assessed at $3 and one of the subdivisions at $2.50?

A. Two portions of it are assessed at $2.50 and three portions of it at $3.

Q. Are you not mistaken about that? Will you please look again?

A. (After referring to record.) No; two are assessed at $2.50 and three at $3.

Q. Can you tell which is the corner property?

A. I do not believe I can from that, without looking at the plat. Which corner do you mean?

A. (Referring to plat.) That covers the corner, does it not?

A. (Indicating on plat.) This is New Hampshire avenue here; I think that would come in the corner property.

Q. Now turn to the assessment for 1896.

A. Yes, sir.

Q. What was the assessed value of the property on which the Leiter mansion stands, on Dupont circle, known as square 135, lot 1, for the year 1896?

A. 13,646 square feet. I find the original entry at $4, but that *is* apparently been marked out with a red line and $3.75 inserted. Probably it is a clerical error in transcribing from the original return.

Q. Which is the correct one?

A. I presume that $3.75 is the correct amount.

Q. Give the other details.

A. It looks like a red-ink mark. The original entry appeared at $4 and it was changed to $3.75.

Q. Give the other details.

A. The total valuation, of course, would be different from what it is here, which would be at the rate of $3.75. The total valuation does not appear to have been erased.

Q. You can omit that. Will you turn now——

A. (Interposing.) I think I could correct that, if you will give me the opportunity, because this is a book that was used by the board of assistant assessors for their own business at the time, and in making the new assessment you can see that $3.75 is what they brought down from the old one. The original assessment for 1894 and 1895 was $4.

Q. Then you will have to inform yourself and report again at the next hearing.

A. No, sir; I am satisfied I am correct as to the $4. I see it is a correction made from the other book. I had not noticed that. They have done the same with the others. This is the original entry just as they are here, and the board for their own convenience drew the red line through and put the new assessment out here on another margin.

Q. I will ask you to produce the original of which that is a
928 photolithographic copy.

A. I will. I did not notice that this was a book that had been used by the board. They get pretty scarce three or four years afterward.

Q. Turn to the Church of the Holy Cross property, square north 137, and kindly state what the assessed value of that was for 1896.

A. That square north of 137 is assessed in its entirety, containing 5,673 square feet, at $4 a foot, making $22,692 for the ground, and improvements $3,000.

Q. *Now will you turn to the property on which the Boardman* mansion stands?

A. What year?

Q. For 1896.

A. What is that?

Q. Known as square 136, lot 1.

A. Lot 1 contains 10,620 square feet, assessed at $2.75 a square foot, making $29,205. At that time——

Q. (Interposing.) Whose property is that?

A. William J. Boardman. At that time the house was not assessed. It is a new house.

Q. Will you look at the property on which the mansion of Gardiner Hubbard stands, on Dupont circle and Connecticut avenue and Nineteenth street, known as square 138, lot 5, and state the assessed value of that property for 1896?

A. Sublot 5 contains 13,769 square feet, assessed at $3.50 a square foot, making $48,192; improvements, $25,000.

Q. Will you give us the same information for the last assessment covering the years since 1896?

A. Sublot 5 for 1897, 13,769 square feet, assessed at $3.25 a foot, making $44,749; improvements, $25,000. Here is the original book, which has just been brought me.

Q. Have you now the original record brought to you showing the assessed value of the property for the year 1896?

A. No, sir; the original record would be the return made by the board of assistant assessors. From that this book is made up, but the original return of the board of assistant assessors is what is considered the original record.

Q. From the book that you now have in your hands, spread out before you, that has just been brought to you, are you able to state the assessed value of the property on which the Leiter mansion stands for the year 1896?

A. Presuming that this book is a correct transcript from that, which I presume it is, it was assessed at $4 a foot. In order to verify that, I would have to send for what we call the original return of the board of assessors, their original return.

Q. Looking at the entry in this book, are there not two entries in regard to the assessed value, one in red ink and one in black ink?

A. Yes, sir.

Q. What is the amount of the one in red ink?

A. Do you mean lot 1?

Q. I do.

A. $3.75.

Q. What is the amount of the one in black ink?

A. $4.

Q. What is the meaning of the two entries there?

A. Without looking at the original return I am unable to explain unless the board had found they had made a mistake and wished a correction made in that original return.

929 Q. What do you think about that?

Mr. DARLINGTON: I object to this question as not calling for any evidence.

Q. Have you any knowledge?

A. What about?

Q. As to which would be the correct assessment for that year—the one in red or the one in black ink—there being two assessments there?

A. I could not say without looking at the original return which is the actual assessment.

Q. Will you kindly do so?

A. Yes.

Q. Can you do so now?

A. Not without sending for the books.

Q. Will you kindly do so?

A. Yes.

Q. Will you inform us what was the assessed value of the property on which Senator Hale's house stands, on the northeast corner of Sixteenth and K streets, being square 198, lots 6 and 7.

Mr. DARLINGTON: I object to any further inquiry in regard to the assessment of lots not concerning this suit, and which have not been before referred to in evidence on the other side, as a useless consumption of time, and I call attention to the fact that more than an hour has already been occupied in the cross-examination of the witness.

A. Sublot 7 contains 3,749 square feet, assessed at $3 per foot, making the ground $11,247. Sublot 6 contains 3,274 square feet, assessed at $3 a foot, making $9,822 for the ground.

Q. Not, will you kindly inform us of the assessed value of the ground on which the mansion of Mrs. Andrews stands, at the southeast corner of Sixteenth and K, being square 199, lot 27?

A. Sublot 27 contains 7,472 square feet, assessed at $3.50 a square foot, making $26,152 for the ground and $30,000 for improvements. Here is the original entry which was made by the board: Square 135, lot 1, was originally returned to the board of appeals at $4.50 a foot; on appeal it was reduced to $4 a foot.

By Mr. DARLINGTON:

Q. So that the black numbers are the correct ones?

A. The black numbers are the correct ones; yes, sir.

(Addressing Mr. Keane:) Lot 18 that you referred to, Mr. Griffin explains is what we call now sublot 76, and it contains 2,147 square feet and is assessed at $1.65, making the total assessment for the lot $3,543.

By Mr. KEANE:

Q. And that is the lot adjoining the northwest corner of New Hampshire avenue and R street?

A. Immediately adjoining lot 17.

Q. Immediately adjoining lot 17?

A. Yes, sir.

Q. Square 153?

A. Yes, sir.

Q. On R street?

A. Yes, sir; on R street.

930 Q. And what is the rate of the same for 1896?

A. It is known as sublot 76 in this year also, containing 2,147 square feet, assessed at $1.80 a foot, making an assessed valuation on the ground of $3,865.

Q. Will you kindly explain by whom the property is assessed?

A. It is assessed by what we call a permanent board of assistant assessors, appointed under an act of Congress.

Q. How many persons?

A. Three.

Q. Can you state who were the three assessors for the year 1896?

A. I have forgotten the time when our present board came into existence—in 1894, I think. It was under an act of 1894.

Q. What are the names?

A. Colonel James A. Bates, J. Harrison Johnson, S. T. G. Morsell.

Q. For what year was that?

A. The last two assessments which have been referred to.

Q. In what year did Mr. Gurley sit as an assessor?

A. That was under a special assessment for a revision of an assessment which had been made by a previous board. It was simply a temporary board, which was appointed for the purpose of revising——

Q. Who were the revisors?

A. E. W. W. Griffin, William B. Gurley, and S. T. G. Morsell.

Q. And taxes were levied upon their assessments for what year or years?

A. I think it commenced in 1894. There was a board prior to that, composed of Mr. Dawson—I forget his initials—John B. or John Dawson—I do not remember his middle name—John F. Cook, and Mr. F. L. Moore; but for what years now I cannot locate the precise time.

Q. And by whom are the assessors appointed?

A. They are appointed by the Commissioners.

Q. Of the District of Columbia?

A. Yes, sir; by the Commissioners of the District of Columbia.

Q. And who are the Commissioners at present?

A. John W. Ross, president; John B. Wight, and Colonel William M. Black, Engineer Commissioner.

Q. And you say that these assessors, so far as you know, have no rule in regard to the ratio?

A. They have not promulgated officially any special standard of the valuations. That will probably come when they make their return next January, which may establish a rule, but the board of appeals may establish some standard if they so desire. I have not been officially informed that they have based any definite rule on the subject.

Q. But so far as you can make out it would be what the property would bring on a forced sale under adverse circumstances?

A. I say that was a rule which was adopted by a former board.

Q. And so far as you know never changed?

A. I do not know that there has ever been any official action taken in changing that rule.

931 Redirect examination.

By Mr. DARLINGTON:

Q. You say that the assessments you gave me on your direct examination began with the year 1897?

A. Yes, sir; with the year ending June 30, 1897.

Q. And beginning when?

A. Beginning July 1, 1896.

Q. When was that assessment made?

A. That assessment was made the year prior.

Q. What year would that be?

A. That was the year ending June 30, 1896.

Q. So that the figures you first gave represent the assessments made by the board?

A. In the year 1896?

Q. The early part of 1896—the first six months.

A. Yes, sir.

Q. Can you tell us who made the entire assessment—the one you have quoted from in your cross-examination?

A. You mean the one prior to 1896?

Q. Yes.

A. E. W. W. Griffin, S. T. G. Morsell, and Mr. Gurley.

Q. That is the Griffin-Gurley-Morsell assessment?

A. Yes, sir.

Q. Is that the only assessment made by a commission of which Mr. Gurley was a member?

A. Yes, sir.

By Mr. KEANE:

Q. Would you consider that property sold under a forced sale under adverse circumstances would bring two-thirds of its value?

A. I think that was the general understanding at the time.

Q. My question is, would you think so; would you think that property sold under a forced sale under adverse circumstances would bring two-thirds of its value?

A. Some class of property would; yes, sir; I think so.

MATTHEW TRIMBLE.

ROBT L. MILLER, *Examiner.*

CHARLES W. SIMPSON, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. DARLINGTON:

Q. Please tell us what your occupation is and how long you have been engaged in it?

A. My occupation is real-estate broker, and I have been in business between eight and ten years.

Q. In this city?

A. Yes, sir; in this city.

Q. Have you been in business alone or as a member of a firm?

A. Well, I have been both. I was in business for myself about four years, and I was a member of a firm the balance of the time.

Q. What firm?

A. George E. Emmons & Company.

Q. In what part of the city have your transactions principally been concerned?

A. Mostly in the northwest and county property.

Q. What kinds of real-estate business have you been engaged in?

932 A. I do not exactly understand the question—what kinds of real-estate deals. Loaning money, buying and selling property, and selling on commissions—the general business.

Q. In the course of that business have you become familiar with the values of real estate in Washington, and particularly the northwest?

A. Yes, sir.

Q. Do you know lots 1, 2, 3, and 66, square 134, being the northwest corner of New Hampshire avenue and Q street?

A. I do.

Q. What, in your opinion, was the fair market value of that property in April, 1896?

A. Well, it is pretty hard to put a value on it. I should value it separately. The corner lots and the inside property, if I remember correctly, in 1896—it was just about the beginning or about a year after our hard times began; there was very little sale for property then, if I remember correctly. I should value the corner lot, 66, and the small lot adjoining it at about $6 a foot, and the two adjoining lots at $3 a foot. About two years prior to 1896 I was in business for myself in the real-estate office of Davidson and Davidson, and John Davidson bought the adjoining lot to this property. That was the lot adjoining on the west. It belongs to Mr. Davidson now; it is his home. If I remember correctly, he paid $2.75 a foot for the lot.

Q. About when?

A. About two or three years prior to that time. Times were good then, too.

Q. The financial depression occurred about when?

A. I think we have had about five years of it now.

Q. Since 1893?

A. Yes, sir; right good and hard, too.

Q. The estimate of value that you have given relates to what kind of sale? I mean sale to a purchaser for what purpose.

A. The property is now suited for an apartment house. At that time they had not commenced to build apartment houses here. I think it is more valuable now than it was then, simply for that purpose—that one purpose.

Q. But my question is intended to ask——

A. At that time I should think it was a very fine piece of property for one residence. Some rich man that wanted that corner, just about one house at the corner, would have a nice big lot.

Q. A sale of that kind to a person that you have based your estimate of values on?

A. Yes, sir; I think it would be very hard to find a customer for that property at that time.

Q. What do you think that property would bring to a person at that time who was buying with a view to investment, simply to sell again?

A. Something about an average of $5 a foot for the whole property.

Q. That would be rather higher somewhat than you make it?

A. I think I said six dollars for the corner, the two lots facing this way (indicating), and $3 for the other two; that would be $12 for the three lots.

Q. That would be about $4.50 a lot?

A. Something like that.

Q. Do you think an investor would give that much for it?

933 A. Very nearly, I think; something like that. I know I dealt a good deal in property around there. Thomas J. Fisher and Company made a large subdivision above that. I sold a good deal of it. I sold Mr. Taylor the square on the north of it at $2.50 a foot. That is all that was asked for property there. I sold a lot directly opposite this, not over three weeks ago, on New Hampshire avenue between Q and a small street that goes in there, I think Corcoran street, for $2.60, directly opposite this corner. I have sold a great deal of property right in that immediate vicinity.

CHARLES W. SIMPSON.

Sworn to and subscribed before me this 23rd day of May, A. D. 1898.

ROBERT L. MILLER, *Examiner.*

GEORGE E. EMMONS, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. DARLINGTON:

Q. State your full name, your occupation, and how long you have been engaged in it.

A. George E. Emmons; occupation, that of real estate, and I have been engaged in it directly and indirectly since 1869.

Q. How much of that time were you engaged directly and how much indirectly?

A. Almost the entire period of that time, except such portion as I was engaged or connected with the American Security & Trust Company, in this city.

Q. What time was that?

A. That was about four years.

Q. What four years were they?

A. That would cover the period between 1891 and 1895.

Q. How were you engaged during that period?

A. During that period I was engaged first as private secretary to the president; afterwards as secretary of the company, and afterwards as secretary and second vice-president thereof.

Q. To what extent did these various positions bring you into connection with questions of real-estate values?

A. Directly in connection with real estate, as the entire duties of the secretarie's office were directed to that portion of their business.

Q. Did you ever make an- appraisements for that company?

A. I have made appraisements.

Q. To what extent have you made appraisements of real estate during the time you say you have been engaged in real-estate business?

A. Very often; but, as a rule, I have invariablcy declined to make specified valuations of property for the reason that very often the person so making those valuations would be compelled necessarily to make lower valuations of the property than the owners thereof held their property at, and in so doing it invariably led the person making such valuations into ill-repute with the owners of real estate, and as a rule I have declined to make valuations.

934 Q. What, if anything, have you had to do with the loaning of money upon real estate and estimating the value of real estate as security thereof?

A. To a very large extent during that time.

Q. Could you tell us approximately—could you give us some idea approximately to what extent?

A. That would be almost impossible, but it would run into several hundreds of thousands of dollars; possibly a million, if not more.

Q. Do you know the property in controversy here—lots 1, 2, 3, and 66, in square 134?

A. I do.

Q. Have you been requested to make an estimate of its value?

A. I think on three occasions my attention has been directed to this property—first, some time during the year 1895; second, by the gentleman there; I do not know his name——

Mr. KEANE: Mr. Keane.

A. And lastly, this morning or yesterday, by Mr. Warner.

Q. What was this first occasion of which you have spoken?

A. The first occasion arose out of the efforts of a certain party who

desired to secure a corner property somewhere in the northwest, in the immediate vicinity of Dupont circle, and indirectly with it, and almost immediately thereafter in connection with an application, I think, from a party in New York, through Mr. Robertson, of the firm of Blackwood & Robertson, in connection with a proposition to erect an apartment house on the very property in question.

Q. The two other occasions, I assume, have been more recent?

A. Yes, sir; they have been very recent.

Q. Have you considered this property with a view to forming an opinion as to its value?

A. I have often considered it with reference to the question of its desirability as a corner property to offer to parties desiring locations of that character, and have always borne it in mind.

Q. How near do you live to it?

A. Almost opposite. In fact, I cannot either enter my house or leave it without seeing the property in question.

Q. You are, then, pretty familiar with it?

A. I ought to be.

Q. What, in your opinion, was that property worth in April, 1896?

A. In answering that question, a person who would give an answer thereto would have to take directly into consideration possibly one or two purposes for which that property could be used, and at the same time the possible demand for a third purpose for which property in that neighborhood is sought for. Segregating the property—that is, taking the corner lot, which has a peculiar form, and offering that particular lot—I would say that that would have in itself a peculiar value, as there was a small area of ground to be paid for where a person acquiring the same would acquire almost an equal area of parking, which could be utilized in the nature of a yard or air space. Taking that lot in conjunction with the other two lots, and giving a value as to the entire property, the material value of the corner property is reduced necessarily and spreads to some extent *pro rata* over the other two adjoining lots.

I would, therefore, after this explanation, say, in my opinion,
935 that the entire property for the purpose of utilization, first, that of using for the purpose of the erection of one entire building thereupon, such as an apartment house, would possibly be utilized at a value of $5.00 per foot. Second, should such a use or purpose be impracticable then, and a person would be compelled to use the property for the purpose of improving in separate dwellings or residences, in that case the value, in my opinion, would be reduced materially, or to that of $4.50 per foot.

Q. You speak of the corner lot separately?

A. I do.

Q. What area do you indicate by the corner lot?

Mr. KEANE: Will you let Mr. Emmons finish his speech?

The WITNESS: I was through.

Mr. KEANE: He had a third subdivision, which he had not approached. Let us hear that. I object to Mr. Darlington interrupt-

ing this witness in the interes-ing narrative of his. Will you not continue, Mr. Emmons, and give us the final division of your subject.

Mr. DARLINTON: I have asked the witness a question, which he will now answer.

A. The area which I indicate by the corner lot is that laid down in the plat books, which is generally accepted by real-estate men as approximately true, and that is that portion of the lot known as lot 1 and marked also lot 66. I take both lots together in answering this question. The plat book indicates the frontage on Q street 23 feet 7 inches by a total frontage—that is, of the two lots—of 46 feet 6 inches on New Hampshire avenue.

Q. You spoke of a third possible use of these premises. Will you state what use you refer to and what your *and what your* valuation is for that use?

A. The third possible use, or that which would give a value, is the demand of people of wealth, who come to the city of Washington seeking a residence, and who are anxious to find one possibly suited to their fancy, and who would under such circumstances pay almost any figure asked for the property. The chances, however, of making sales to such parties are so remote and are not so frequent as would, in the opinion of persons valuing real estate, *as to* give to the ground the value that they are willing to pay. This property in question is situate, being a corner, near Dupont circle, that might be sought in that sense, and if so sought and parties would be satisfied with it, people of wealth, there was possibly a chance of that ground bringing more money than the value which I have heretofore placed upon it. This, however, in my opinion, would not lead to an increased value when we come to say generally what the property would be worth on the open market. The values which I have given are such which, in my opinion, the property would bring, and no more, on an open market at that time, 1896.

Mr. KEANE: Will not the witness, in order to make his address complete, state the valuation based upon the third purpose?

The WITNESS: I cannot give any more than I have.

936 Mr. DARLINGTON: Mr. Keane does not seem to know it, but his cross-examination will come after I am through.

Mr. KEANE: That is not cross-examination. It is a suggestion on the record that I thought you would welcome. It seemed to be an omission on the part of the witness. His address seemed otherwise so complete that I thought it was a pity not to have that final touch.

Q. Please state why you have not considered the possible price which the third class of persons you have namad might give as the element in fixing the market value of property.

A. Simply because, as I have said before, the prices which property have brought in that neighborhood have been prices at which subsequently property could not be sold for, and, being so, I could not recognize such prices as being prices which would establish such increased values.

Q. What, in your opinion, was the price which could reasonably have been obtained for that property in April, 1896, from persons who were buying, not for their own use, but as an investment, to be sold again?

A. I think the value which I have given you for the entire property, namely, $4.50 per foot, would be, in my opinion, or such as I would advise any client of mine to pay, a full, fair value of the property as an investment, such an investment as there might possibly be a slight chance of obtaining some return from, either by a resale thereof or by an improvement of the ground. It should be remembered that property at such prices, unless they are made productive at once—that the interest thereon *and* in a very few years so far increases the value of the property that a person is compelled to often sacrifice the property in order to estop that loss.

Q. Would you yourself have advised a client of yours to pay $4.50 per foot for that property at that time as an investment, with a view to sell again?

Mr. KEANE: Question objected to as manifestly incompetent. As to what this witness might or not have advised clients of his to do has nothing whatever to do with the value of this property.

Mr. DARLINGTON: I will modify that question by saying, would you have felt it safe to advise?

The question was then read to the witness as follows:

"Would you yourself have felt it safe to advise a client of yours to pay $4.50 a square foot for that property at that time as an investment, with a view to sell again?"

Mr. KEANE: I object to it for the same reason, that there is no proof of value even from such a source.

A. I should have hesitated, and before I should have allowed them to consum-ate such a purchase I should have called their attention to the fact that in order to utalize it and make a profit out of it there should be no delay in carrying out some particular object. If, however, they desired it as a matter of residence, and they had the means and wanted a location for a private residence
937 similar to that of Mr. Whittemore or in its nature like that of Mr. Leiter and others of that character in that neighborhood, I should have told them, being pleased with the location, that I would think that they could not get a better location than that for a residence.

Cross-examination:

Q. Do you mean that the price at which property sells in a given locality is a matter of so little consequence to you, according to the way in which you appraised property, that you are just as well qualified as if you knew the value at which the property was sold for?

A. I would answer that question precisely as I have answered before. Nearly all, if not all, of the various specific properties that you have mentioned have been of a nature in which the parties buying the property have paid an abnormally high figure for the property,

because they liked the specific location, and the reason that they pay that abnormal figure would not change my opinion of a piece of property similarly located unless somebody else would come along of a similar character and want that specific property. Then there might be an opportunity to sell that property, or I might have to wait five years for a person to come along who would want similar property located for similar prices. Therefore that does not control me in making my values.

Q. Do you mean that these people who bought those various properties did not buy them for as cheap a price as they could?

A. I mean to say that those people paid for more for that property than what it was actually worth as a matter of investment, and if they had not bought it the parties themselves would not have got the figures they did get for it.

Q. Do you or do you not think they paid as little as they could for the property?

A. They no doubt tried to get it cheaper than they did get it. There is no other answer to that question.

Q. They bought it for as cheap a sum as they could?

Mr. DARLINGTON: I object to the question as evidently not calling for any personal knowledge of the witness.

A. There is no doubt about that.

Redirect examination.

By Mr. DARLINGTON:

Q. You were asked to state fully what Mr. Warner said to you when he conferred with you about being a witness in this case. To make matters even, I think you might tell us what Mr. Keane said to you when he applied to you for the same purpose.

A. I think I have stated that—that he wanted to know the value of this property in question. I think I stated to him that my idea or opinion of the value of property in that neighborhood was not up to the general standard of many others, and I did not care to place my figures. Then it was that he asked me if it was not worth
938 $6.50 or $7 a foot, something of that kind, or whether I had not stated its value as such.

Q. Did he discuss with you this case of Warner and Wine?

A. Yes, sir; he did.

Q. Please tell us what he said in that connection.

A. I cannot recollect the conversation. This gentleman here, Mr. Keane, generally went into the details of the case, and I said I did not care to hear anything about it. I shut up my ears a good deal and told him I did not care to go into the details of the case.

Q. Can you tell us in substance what he said about it?

A. He said a great deal about it. I cannot give you the exact conversation at that time.

Q. Please do so as nearly as you can.

A. The statements made were directly against Mr. Warner and

his integrity, and I remarked to Mr. Keane that I did not think he could sustain that, although he thought he could.

Q. But you have not told us what he said.

A. It would be impossible for me to reach that point—that is, to give you the exact language.

Q. Tell us as nearly as you can.

A. The substance of it was this—I will give you the substance, and that is all I can—that Mr. Warner had conspired with Mr. Wine to secure this property fraudulently from these people, and that Mrs. Godfrey or Miss Godfrey, this young lady, I do not know which, either one, had suffered a loss of the property through some manipulations of some party in New York city, and that through further connections between Mr. Warner and Mr. Wine, or his office or the office of Warner and Company, that they had obtained the property at a very nominal figure from this party in New York, and they had themselves received nothing. I think I answered him very fully, that I did not think either of the parties were guilty of any such action. He maintained, however, that they were.

SAMUEL ROSS, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. DARLINGTON:

Q. Please tell us how long you have been a resident of Washington and how you have been engaged here.

A. Almost 22 years, and I have been engaged in furnishing supplies to builders and contractors.

Q. What connection have you had with real-estate matters?

A. In furnishing supplies, as I have done for 22 years, I have come in contact with purchases and sales of real estate and loans almost daily in some way. At the same time I would not say that I would class myself as an expert.

Q. You have been familiar with the purchase and sale of real estate and loans thereon for how many years?

A. 22 years.

939 Q. Approximately to what extent and in what parts of the city?

A. All over the city; all over the District of Columbia, you might say.

Q. Could you give us an approximation of the frequency with which you have been concerned in the purchase and sale of real estate and loans?

A. There is scarcely a day goes by that I am not consulted about a loan or to advise about an exchange, as many customers as I have.

Q. How long has that experience existed?

A. Ever since I have been in business here—22 years—and to quite an extent in the last ten years, you may say.

Q. Have you yourself bought and sold real estate?

A. I never bought much. I have bought some; yes, sir.

Q. Have you in the way you have described become familiar with real-estate values here?

A. I think I am a pretty good judge of the value of real estate; yes, sir.

Q. Do you know the property at the northwest corner of New Hampshire avenue and Q street, lots 1, 2, 3, and 66, square 134?

A. Yes, sir.

Q. Have you considered that property with a view to forming an estimate of its value?

Mr. KEANE: Do not answer whether you have formed an estimate of it; just answer the question.

A. I did about two years or probably three years ago; two or three years ago.

Q. Under what circumstances?

A. The property was brought to me with a view of exchange, I think, by Mr. Baumgras. I have a piece of property that I thought of offering for that, and I figured up what I could get out of this property if I took it and get rid of what was a bad piece of property on my hands, and my recollection is that I figured that property as not worth over $25,000; that if I could get it at $25,000 I would have taken it, because it was a better piece of property than mine was.

Q. That was about two years ago?

A. It may have been three years ago.

Q. What, in your opinion, was that property worth in April, 1896?

Mr. KEANE: I object to any testimony on the part of this witness as to the value of that property on the ground that it plainly appears by his examination that no proper foundation has been laid by which to qualify him as an expert, and that his testimony upon the subject of the value of real estate is therefore incompetent. I think plainly he is not an expert, and does not even claim to be one, and very properly. This is the first time I have ever heard of a man being offered as an expert in regard to the subject of real-estate value who is engaged in furnishing supplies to builders and contractors; that there is no lack of real experts in Washington, men of well-known real-estate fame and reputation, who have been engaged prominently in the business all their lives.

940 A. As to the question of my buying real estate, I said at the outstart that I had not bought a great deal, but come to think what I have bought, it would amount to probably $200,000 which I have bought myself.

Q. That is in addition to what I understand you have done for several others in the purchase or sales and loans?

A. And buying in under mortgages.

Mr. KEANE: Is that offered in answer to the last question?

The WITNESS: As to my ability in buying property.

Q. Tell us what, in your opinion, this property was worth in April, 1896.

A. $23,000 to $25,000 was the valuation I put on it.

Q. What familiarity have you as to the value of other property in that locality?

A. The triangle that was sold on New Hampshire avenue, northeast of this property called the Hooe property, I think it was myself and some other gentlemen contemplated buying or bidding on it at auction $5.50 a foot. It was sold for a little more than that—$6.

Q. When was this?

A. I presume a year or two years ago since that property was sold. It was the time it was put up at public auction and sold.

Q. How does that property compare in point of eligibility and desirability with this property on New Hampshire avenue and Q street?

A. It is a better piece of property.

Redirect examination.

By Mr. DARLINGTON:

Q. You have spoken of some property as surrounding New Hampshire avenue and Q street that was out of keeping with the property there and tended to depreciate its value. What property do you refer to?

A. The property on 18th street and the property on Q street in the neighborhood of this property in controversy here, which is not as good property as it ought to be. The houses have been built some time ago.

Q. Suppose the area of a corner property is as much as 6,000 square feet of ground, does this area increase or diminish the value of it as a corner per square foot?

A. The larger the area the less it is per square foot.

SAMUEL ROSS.

Sworn to and subscribed before me this 24th day of May, A. D. 1898.

ROBT L. MILLER, *Examiner.*

941 W. CLARENCE DUVALL, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. DARLINGTON:

Q. What is your occupation?

A. Real-estate and fire-insurance business.

Q. How long have you followed that vocation, and where?

A. For more than 20 years, and for the last 13 or 15 years at 925 F street northwest, in this city.

Q. Prior to that was it in this city or elsewhere?

A. In this city the whole time.

Q. The whole 20 years has been in this city?

A. Yes, sir.

Q. Have you been conducting business of your own or as a member of a firm?

A. For more than half that period alone; previous to this with a firm.

Q. What firm was that?

A. I was connected with James H. Marr, who is now dead.

Q. The firm was Duvall & Marr?

A. Duvall & Marr.

Q. How long have you been alone?

A. I think about ten years; it may have been a little more.

Q. Will you please state generally what branches of the business you have been engaged in, and how extensive, and in what part of the city?

A. I have been confined to no particular section of the city, but have done probably a modest business during that period that amounts to a good many sales, and we rent houses.

Q. And loan money?

A. Loan money and built some houses.

Q. You mean you have purchased ground, built houses, and sold them over again?

A. Yes, sir.

Q. Please state whether in the course of that business you became familiar with the real-estate values in the city of Washington.

A. I think fairly so.

Q. Do you know the property, lots 1, 2, 3, and 66, square 134, northwest corner of New Hampshire avenue and Q street?

A. Yes, sir.

Q. Please state whether you have given any thought to that property and its value in April, 1896?

A. I have.

Q. At whose instance or request?

A. At the request of Mr. Wine.

Q. Will you give us the benefit of your judgment on that question?

By Mr. KEANE:

Q. What is that you have in your hand?

A. It is a plat of the ground.

Q. Let me see it.

A. (Exhibiting it to counsel.) It is a private memorandum to refresh my memory.

Q. Where did you get that? I would like to examine this man upon that point. Where did you obtain that?

A. Mr. Wine gave me the plat.

942 Q. Mr. Wine gave you the plat, did he?

A. Yes, sir; I compared it with the original plat book, the same as you have there, and I think it is correct.

Mr. DARLINGTON: That is the Hopkins plat?

The WITNESS: Yes, sir.

Mr. DARLINGTON: I am entirely willing that the plat may be filed as an exhibit in the case if it is desired.

By Mr. KEANE:

Q. Whose handwriting is this; in whose handwriting is this (indicating)?

A. It is mine. It is a private memorandum to refresh my memory, that lead-pencil part.

Q. Whose handwriting is this in ink?

A. I could not tell you. It was on the plat when it was handed to me.

Q. Whose handwriting is this (indicating)?

A. My handwriting—a private memorandum to refresh my memory.

By Mr. DARLINGTON:

Q. Now, if you will oblige us——

The WITNESS: I believe your question was what——

Q. What, in your judgment, was a fair market value of that property in April, 1896?

A. In my opinion, the valuation is $4.50 a foot, including the improvements, and that is a fair value, in my opinion.

Q. What value do you attach to the improvements?

A. I consider those improvements worth $3,000 as they stand there now—that is, they represent or are worth that. Yet in reality I do not believe they have any actual value—that is, they serve to bring in an income now and is a desirable thing to have, but ultimately the property which has improved the ground will have to be razed, and the cost of cleaning off the bricks and tearing it down would be as much as the material would be worth to use it.

Q. In your opinion, could a man pay $4.12 a foot for that ground and allow those improvements to remain on it?

A. No, sir.

Q. You estimate its worth $4.50 a square foot sold to what kind of a purchaser?

A. To a party who wanted the whole thing for a specific purpose—one who desires that particular lot. It is a nice lot there, because it is a corner.

Q. What, in your opinion, could that property have been reasonably sold for in 1896 to a person who was buying with a view to selling again?

A. I think any one who bought it on speculation would have to buy it to make anything out of it at all at a less figure than that, in my said opinion.

Cross-examination.

By Mr. KEANE:

Q. Who did you say gave you that paper that you hold in your hand containing a diagram and the memorandum of assessments?

A. Mr. Louis D. Wine. I thought you understood me.

943 Q. Mr. Louis D. Wine?

A. Yes, sir.

Q. When did he give it to you?
A. A week or ten days ago.
Q. Who were present?
A. Mr. Wine and myself.
Q. Any one else?
A. No; not that I recall.
Q. Are you sure?
A. No.
Q. Will you swear no one else was present?
A. No; I will not.
Q. You will not swear?
A. No.
Q. Why will you not swear?
A. Because I do not think any one else was present.
Q. You will swear Mr. Warner was not present?
A. Yes, sir.
Q. You will swear Mr. Warner was not present?
A. Yes; I have said so.
Q. Did Mr. Warner ever have any conversation with you on the subject of this property or of appraising it?
A. I do not think Mr. Warner has had any conversation at all with me in relation to this property. I do not recall it—that is, as to its value at all. A little while ago he expressed regret that I had to remain here at this late hour in the evening.
Q. You came here solely at the instance of Mr. Wine?
A. Mr. Wine was the party who requested me to come; I do not know whether at his instance solely. I expected Mr. Darlington wanted me here. I expected Mr. Warner wanted me here. If I thought to the contrary I would not be here.
Q. What made you think that?
A. They are interested in the case, as I understand.
Q. Who are?
A. Mr. Warner, as I understand.
Q. Mr. Darlington?
A. And Mr. Darlington, as I understand; yes, sir.
Q. If you did not understand that Mr. Warner and Mr. Wine and Mr. Darlington were interested in the case you would not have come here; is that your idea?
A. I guess so; yes; unless somebody else——
Q. (Interposing.) What are the reasons?

Mr. DARLINGTON: Go on and finish your answer.

Q. Are they friends of yours?
A. Yes, sir; I think so.
Q. All three of them?
A. Yes, sir; I hope so.
Q. No one more particularly than the other?
A. No.
Q. You have known them all equally long?
A. I think not. I must suggest that it seems trivial to ask such question.

Q. Have you known them all equally well?
A. Yes, sir.
Q. How long have you known Mr. Warner?
A. 20 years.
Q. In what relation have you known him?
A. In what respect do you allude?
Q. Does not my question convey any meaning to you?
A. Not of necessity.
Q. Do you not know what that question means, In what relation have you known Mr. Warner?
A. I judge you mean in a business way. I know Mr. Warner as a business man engaged in real-estate business in Washington.
944 Q. Have you known him in any other relations?
A. To some extent in a general way.
Q. And have your business and social relations with Mr. Warner extended back 20 years?
A. Probably so.
Q. How long have you known Mr. Wine?
A. Probably ten or fifteen years.
Q. And you have known Mr. Warner longer than that, have you not?
A. I think I have.
Q. Why did you object to stating that a few minutes ago?
A. I did not object to stating it.
Q. You say you have known all of these three gentlemen equally as long?

Mr. DARLINGTON: I object. The witness has stated nothing of the kind.

A. I said nothing of the sort. If I did, it was a mistake.
Q. How well have you known Mr. Wine during that time?
A. It is hard to say how well one has known a man. I have known Mr. Wine to speak to him for the period I have stated. I have come in contact with him in a business way to some extent; I have come in contact with him in a social way to some extent. The degree of knowing him it would be almost impossible for me to say.
Q. So that you have also had for—did you say 15 years—how many years have you had social and business relations with Mr. Wine?
A. I do not recall how many I said just now.
Q. What would be the right number?
A. Probably ten or fifteen years.
Q. Did you come here in obedience to a subpœna that was served on you?
A. No, sir.
Q. What preparation did you make of yourself to come here and testify as a witness?
A. I brushed my coat off before I came. In what manner do you mean?
Q. Did you go up and examine this property?

A. Oh, yes, sir; not just before I came, though.

Q. What preparation did you make before you came here to testify as a witness?

A. I did that just before I went there. I went up and examined the property.

Q. How long ago?

A. Probably a week or ten days ago.

Q. Was that the first time you have ever examined it?

A. For the purpose of testifying here, yes, sir.

Q. Did you notice the character of the improvements by which the northwest corner of New Hampshire avenue and Q street was surrounded?

A. The northwest corner of New Hampshire avenue and Q street? Is that this property we are talking about?

Q. What property are you talking about?

A. I wanted to see if we were at the right place. I am talking about the property at the northwest corner of New Hampshire avenue and Q street.

Q. Is not that what I said?

A. If you did, then we agree.

Q. Now, will you answer the question?

A. What was the question?

945 Question repeated.

Mr. KEANE: If you did not understand that—did you notice the houses that were on the four other corners?

A. Yes.

Q. How would you describe them in point of costliness and beauty; what would you say of them?

A. They are very handsome houses.

Q. Are you familiar with the sales of property in that neighborhood?

A. Not particularly, no, sir. I am familiar to some little extent as to the asking prices in that neighborhood.

Q. But you would not consider yourself familiar with the prices at which property up in that locality have been sold, would you?

A. No.

Q. Would you consider yourself competent judge of the value of a piece of property in a locality where you were not familiar with the prices at which property was sold?

A. Yes, I think so; to some extent, anyhow.

Q. Are you aware that your testimony here is intended to bear upon the rights of innocent parties?

A. No; I have no such knowledge as that.

Q. What is the process at which you would arrive at an opinion of the value of a piece of property in a given locality where you were unfamiliar with the prices at which property was buying and selling?

A. I claim to be familiar in a general way with prices that have been paid or with prices that are asked for properties in various sections of the city. I have information in regard to prices asked

for property in the immediate vicinity of this property. I have sold a piece of property not far from that place—aided a party in coming to a conclusion to buy, aided him in coming to a conclusion as to the value of the ground. For instance, I have some general idea of the value of property on 12th street, say, between M and N northwest, on Fifth street between M and N northeast, T street between 14th and 15th northwest.

Q. And so you are basing your estimate of what property is worth in the vicinity of New Hampshire avenue and Q street upon what you know of property down at 12th street, 5th street, and T street. Am I right?

A. No; not exactly. I claim to have a general knowledge of what property in those various locations, also including this property in question, is worth.

Q. What do you mean by general knowledge?

A. I know of the difference in values between those locations.

Q. How can you know the difference in values when you confess that you are not familiar with the prices at which property sold in the vicinity of New Hampshire avenue and Q street? How could you have any knowledge of the value of the New Hampshire Avenue and Q Street property without knowing the prices at which property was selling there?

A. I have stated that I do know what prices property in that location is selling at, and I repeat it.

Q. Do you know the prices at which the property of Nelson Page was sold to him?

A. No; I understood by listening here that it was at $6 a foot, but I am not positive of that.

946 Q. You found that out by listening to what has transpired in this court-room, did you?

A. I think so.

Q. But before you came here you were ignorant of that fact, were you not?

A. Yes; as a matter of fact, I never heard of Nelson Page owning that property. I do not think Nelson Page owns that property, or that he ever bought it.

Q. We will not go into that. We will speak of the sale, whoever bought it. The main thing is whether you are or are not familiar with the price at which it sold, and you say you only learned that while in this court-room?

A. Previous to coming here I do not think I had any particular knowledge of that particular sale.

Q. That was quite a prominent sale at the time, was it not?

A. It had not attracted my attention.

Q. If you were familiar with the purchase and sale of property in that locality, you would surely have known of it, would you not?

A. Not of necessity.

Q. Do you know the price at which the property sold between the Leiter and Whittemore houses on New Hampshire avenue?

A. What property do you allude to?

Q. Any property between those two houses. Do you know the price at which it sold?

A. No.

Q. You do not?

A. No, sir.

Q. And you really think you are tolerably familiar with sales of real estate in that locality, do you?

A. What property is worth there and what they are asking for property; yes.

Q. Did you know there had been a sale of some property on New Hampshire avenue between the Leiter house and the Whittemore house?

A. Yes; I think I have read or heard of a sale in recent years there.

Q. In recent years?

A. Yes, sir.

Q. When did you hear of that?

A. I may have heard of it within a year; I have no particular knowledge.

Q. You did not know at what price any property situate between the Whittemore house and Leiter house did sell for, do you?

Mr. DARLINGTON: I submit that a repetition of the questions that have been answered is a rather profitless consumption of time.

Mr. KEANE: I am sorry Mr. Darlington is nervous, but I can sympathize with him.

Mr. DARLINGTON: If nervousness consists of some want of appreciation to put the same question over and over again that has been answered, I plead guilty.

Mr. KEANE: I will leave that to the court to pass upon.

The WITNESS: I wish the witness could express his opinion, but I guess he cannot.

Question repeated.

A. No.

Q. But you do think that you are familiar with the sales of property in that locality, as I understand you?

947 A. No; I think I am familiar with what ought to be a fair value at that place, and I am also familiar with what they are asking for some property in that location.

Q. Are you familiar with what the triangle known as the Hooe property sold for?

A. Where is that located?

Q. Do you not know where the triangle known as the Hooe property is located?

A. Our plats show no place known as the Hooe property.

Q. You never heard of the sale of a triangle in that locality at public auction which was bought by Mr. Hooe and is known as the Hooe triangle, did you?

A. I never knew of a place as the Hooe triangle, but I think I know the one you are trying to get at, which is located at the corner of R and New Hampshire avenue, immediately south of the Page

house, which, by the way, I think is Mrs. Page's house, and not Mr. Nelson Page's house. If that is the one, why, I say, Yes.

Q. When did you last hear mention of that sale?

A. I heard mention of it very recently, that it was bought, I understood, for $5 and possibly for $5.50 a foot, and that they wanted to get $7 a foot for it now.

Q. When did you hear of that?

A. I heard of that within the last ten days, or about ten days.

Q. From whom did you hear that?

A. Mr. Rozier Dulaney spoke to me about it; told me practically what I have just said. He claims to have it for sale and has his board up on it.

Q. For how much has he it for sale?

A. He told me $7 a square foot; he has not sold it yet.

Q. Did he tell you what it had been last sold for at public auction?

A. I understood him to say that the owner paid $5.50 or $5—I do not recall exactly which—for it.

Q. Did you hear the testimony of the last witness?

A. I paid no particular attention to it. I got weary and went into the other room.

Q. You are not the only one who is weary.

A. I am glad, then, there is some other sufferer.

Q. But you did hear some of his testimony, did you?

A. Yes, sir.

Q. Did you hear the part of his testimony in which he referred to that triangle?

A. I think not; not unless you refresh my memory about it.

Q. Did you not hear him testify that to his knowledge that property sold for more than the price of $5.50, which you were willing to offer for it in conjunction with others?

A. I paid no attention to it; no, sir.

Q. If his testimony is correct, your information on this subject is not particularly accurate, is it?

A. It may not be.

Q. But you have no knowledge of the sale of that property at or about the time that it was sold?

A. No.

Q. Do you not think that if you were familiar with the sales of property in that locality that you would have known of the
948 sale of so conspicuous and prominent a triangle as that at the time it was sold?

A. No; not of necessity. I may have heard of it, but did not charge my mind with it at all. I had no particular interest in that particular section of the city.

Q. Did you know of the sale of the Church of the Holy Cross property in that locality?

A. I recall in a general way of it being sold.

Q. Did you know of its sale at or about the time when it was sold?

A. I think I was aware of that sale at that time. I was informed

probably through the press. I was not present at the sale, and had nothing to do with making the sale or closing it.

Q. You say you think?

A. Yes, sir.

Q. You are not positive of that, are you?

A. I am fairly positive.

Q. Would you swear you knew of it?

A. I will swear I think I knew of it.

Q. Will you swear that you knew of the sale of that property at or about the time it was sold?

A. Yes. I always swear to the best of my ability and belief, so that I swear to the best of my knowledge and belief that I know of that sale when it occurred.

Q. To the best of your knowledge and belief.

A. That is the way I always swear.

Q. You never swear positively, do you?

A. As positively as I can. It is always qualified with me.

Q. Now, when was it sold?

A. I think it has been sold within the last two years. That is as near as I can recall. I told you I did not recall it exactly.

Q. Will you swear it was not four years ago?

A. No, sir.

Q. Will you swear it was not five years ago?

A. No, sir.

Q. Will you swear it was more than one year ago?

A. I have just sworn that I thought it was two years ago, about that. I am not positive as to the time.

Q. Do you know what price it brought?

A. No; I do not know what price it brought.

Q. That was the sale of a very prominent piece of property, was it not, in that locality?

A. A prominent and desirable piece of property, in my opinion.

Q. A piece of property bounded by Dupont circle, 18th street, P street, and Massachusetts avenue?

A. Yes, sir. I know about that property very well.

Q. Yet you are unable to state positively the time when it was sold or the price at which it was sold?

A. Yes, sir; I am unable to state that positively.

Q. And yet you do think yourself tolerably familiar with the sales of property in that locality. Am I right?

A. No, sir; I do not say "tolerably familiar" with the sales in that locality. I have never said that. I say I am fairly familiar, in my own opinion, with the value of property in that location, and also of what people are asking for property at or near that location.

Q. Do you not think that if your mind were instructed as
949 to the price at which the property of Nelson Page was sold, the price at which the property known as the Hooe triangle was sold, the price at which the property between the Leiter and Whittemore house was sold, the price at which the triangle known as the Church of the Holy Cross property was sold, that you would be better qualified to judge of the value of property in that locality?

A. Oh, I hardly think that information would have been necessary. There is no comparison between those triangles and this piece of ground you are talking about, as far as the value of one is compared by the other.

Q. That is what you think?

A. Yes, sir.

Q. That is hardly worth knowing about, you think?

A. I did not say so.

Q. Do you think it was equally unimportant to know of the price at which the corner of New Hampshire avenue and R street sold for, when you are asked for an opinion as to the value of New Hampshire avenue and Q street; is that your opinion?

A. That opinion is unnecessary as far as I am concerned, because I have other information to my mind that was just as desirable.

Q. And you do not think that a knowledge of the price at which the inside lot between the Whittemore house and the Leiter house sold would have aided you at all in arriving at an intelligent opinion as to a just value for the northwest corner of New Hampshire avenue and Q street?

A. Not when I had knowledge that lots on New Hampshire avenue not far from that same place you allude to were offered for sale at $3.50 a foot.

Q. Having that knowledge, you think all this other knowledge is perfectly superfluous; is that your idea?

A. I did not say so.

Q. What would you say in regard to the condition of the market at the present time and in 1896; is it better or worse now?

A. It is surely no better.

Q. Surely no better?

A. In my opinion, not.

Q. Is it any worse?

A. I am unable to say; the market at that time, in my opinion and now, is very bad.

Q. Are they about equally bad, or better or worse; what do you think?

A. We had better say it is an equal thing.

Q. What would you consider the more valuable property, property on the northwest corner of New Hampshire avenue and Q street or the inside lot between the Leiter house and the Whittemore house?

A. It would depend somewhat upon the size of it.

Q. Considering an equal area.

A. I think the corner property is more desirable under those circumstances.

Q. How much more valuable would you consider the corner than the inside lot per square foot?

A. Where would your inside property be located?

Q. Between the Whittemore house and the Leiter house; that is what I have just referred to, if you will pardon me.

A. It would be pretty hard to say. I have given it no thought at all. I do not see how you would be apt to have a piece of

ground nearly of the same size and *as* shape as this corner in the centre of the square where you have indicated to make the comparison.

950 Question repeated.

A. I have given it no thought. I would be able to say from a dollar to two dollars more a foot, but I have given it no thought and do not make that as a positive answer at all.

Q. Which would you consider the more valuable, the northwest corner of New Hampshire avenue and R street or the northwest corner of New Hampshire avenue and Q?

A. I do not think there is any difference.

Q. You think one is about as valuable as the other, do you?

A. Yes, sir.

Q. Are you aware that the property in the vicinity of the northwest corner of New Hampshire avenue and R street is nearly all vacant?

A. Yes, sir; a great deal of vacant ground on New Hampshire avenue, all the way out to boundary.

Q. And are you aware that the three corners contiguous to the northwest corner of New Hampshire avenue and R — are vacant and unimproved?

A. Yes, sir; and for sale, too.

Q. And, taking those facts into consideration, you consider that the northwest corner of New Hampshire avenue and R street is just about as valuable as the northwest corner of New Hampshire avenue and Q street, with four handsome residences built on the four surrounding corners, do you?

A. Yes, sir. If those fine houses help this lot at New Hampshire avenue and Q street, they also help the lot which is simply within the next square above.

Q. You think so?

A. Yes, sir.

Q. Just equally?

A. Yes, sir.

Q. And it would help those other corners surrounding the New Hampshire Avenue and R Street house from being built upon by inferior or cheap buildings, you think, do you?

A. I do not think that is any guaranty, but the price of the ground will be guaranty enough that only desirable houses will be put on there, I think.

Redirect examination.

By Mr. DARLINGTON:

Q. You have been asked to institute a comparison of the lot intervening between the Whittemore house and the Leiter house, and the corner of New Hampshire avenue and Q street. Suppose the lot between the Leiter and Whittemore houses has a frontage of about 30 feet and a depth of about 80 feet, and is practically a parallelogram, which do you think the more valuable per square foot?

Mr. KEANE: Objected to on the ground that there is nothing in the record on which to base the hypothesis.

Q. Which, in your opinion, would be worth the more per square foot of the two properties, the New Hampshire Avenue and Q Street property, having the shape you are familiar with, and containing over 6,000 feet of ground?

A. Do you mean by the square foot?

951 Q. Yes.

A. A lot located there, on New Hampshire avenue, between Leiter's and Whittemore's, 30 by 80 feet, is certainly a very elegantly sized lot, somewhat unique, and might be by some people thought to be worth as much as property located on that corner; but the fact that this is corner ground—as far as I am concerned, I would give preference to the corner property as to price.

Q. Notwithstanding the difference in areas, one being about 2,400 feet and the other over 6,000 feet?

A. That would enter into it.

Mr. KEANE: I wish the court to please notice the way in which the witness was led on the last question.

The WITNESS: Considerably, too. I imagine that you could get some one who wanted to build one house to give about as much for that one lot per foot as you could get them to give for so large a number of feet on that corner.

By Mr. KEANE:

Q. Which, in your opinion, would be the more eligible for a handsome residence, the corner of New Hampshire avenue and — street or the inside lot?

A. It would have to depend upon the size of the house.

Q. I said for a costly residence like those residences on the surrounding corners.

A. I still say it would have to depend upon the size of the house. This inside lot you could not put a house in larger than 30 feet front.

Q. Therefore it would be the more eligible for a costly house, such as the Whittemore house or the Clover house or any of those large, elegant houses?

A. You could not put, I do not presume, either of those houses on this inside lot.

Q. Therefore, which would be the most eligible?

A. One is not more eligible at all, and it would be therefore impossible to institute a comparison.

Q. Which one is eligible at all?

A. I do not think a thirty-foot front lot would accommodate Mr. Whittemore's house at all, nor do I think it would accommodate the other house that you have referred to.

By Mr. DARLINGTON:

Q. Which of the two lots would be more readily salable?

A. You can sell a smaller lot. That is a very finely shaped lot, unique and unusual in that section, 30 by 80 feet, and a man would

have to pay a good price for it, and I presume he did; but, still, lots 25 by 100 or 110 square feet or so above there can be bought now for $3.50 a foot. I do not know what they paid for this lot between Leiter's and Whittemore's, but more than one lot not far from there can be bought for $3.50 a foot.

W. CLARENCE DUVALL.

Sworn to and subscribed before me this 24th day of May, A. D. 1898.

ROB'T L. MILLER, *Examiner.*

952 Adjourned until Friday, May 27, 1898, at 2 o'clock p. m., at the office of Mr. Wm. F. Mattingly, # 435 7th St. N. W.

J. MAURY DOVE, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. MATTINGLY:

Q. Give us your age, residence, and occupation.

A. I am 41 years old; residence, Washington, D. C.; my occupation is coal merchant.

Q. How long have you resided in this city?

A. I was born here.

Q. State whether you recently purchased a piece of real estate at the corner of Connecticut avenue and S street.

A. No; New Hampshire avenue and S.

Q. I mean New Hampshire avenue and S.

A. Yes, sir; the southwest corner, lot 61, and I think part of lot 62.

Q. Give us the dimensions in relation to the lot, as near as you can.

A. 120 feet on the north line or S street, about 95 feet on New Hampshire avenue, and 70 feet on one south line, and then runs across to an angle on S street.

Q. About how many square feet are there in that lot?

A. 5,200 and about 60 feet, within a few feet of that.

Q. State when you made that purchase.

A. Either in August or September last, one or the other. I think possibly the deeds were passed in September.

Q. 1897?

A. 1897; yes, sir.

Q. What did you pay for it?

A. $20,000, about an average of $3.80 a foot. It came to little over that, and they made the option in round figures, $20,000.

Q. Before purchasing that property did you look at the property at the northwest corner of New Hampshire avenue and Q street?

A. I did.

Q. Did you inquire the price of that?

A. I did not.

Q. Why?

A. The formation was not just exactly satisfactory to me.

Q. You preferred the lot, then, that you bought?
A. Yes, sir; I did.

No cross-examination.

J. MAURY DOVE.

Sworn to and subscribed before me this 27th day of May, A. D. 1898.

ROB'T L. MILLER, *Examiner.*

953 JOSEPH T. DYER, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. MATTINGLY:

Q. State your name, residence, and occupation.
A. I am 53 years old; Washington city; real estate.
Q. How long have you been engaged in the real-estate business in this city?
A. About 20 years.
Q. Are you generally familiar with the values of real estate here?
A. Yes, sir.
Q. Do you know the property at the northwest corner of New Hampshire avenue and Q street?
A. Yes, sir.
Q. Lots 1, 2, 3, and 66, in square 134? I hand you a plat of this property.
A. (After examining plat.) Yes, sir.
Q. Please state what, in your opinion, that property was worth in April, 1896.
A. I think it was worth from $4 to $4.50 a foot.

Cross-examination.

By Mr. KEANE:

Q. At whose request did you come here?
A. Mr. Warner's.
Q. When did he first speak to you about this case?
A. A couple of days ago.
Q. Yesterday?
A. No, sir; I think it was last Friday or Saturday.
Q. Today is Friday. That would be a week ago, would it not?
A. Yes, sir; if he spoke to me on last Friday, it would be.
Q. Whereabouts did he speak to you?
A. Whereabouts?
Q. Yes.
A. At his own office.
Q. What were you doing there?
A. I was there to see him on some other business.
Q. What business was that?
A. In regard to a sale which we had about made.

Q. What do you mean by a sale that you had just about made?

A. There had been a proposition made on a certain piece of property. The proposition had been accepted, and I was there to tell him that it had been accepted.

Q. You mean a sale that had been made by you and him?

A. Yes, sir.

Q. On joint account?

A. Yes; as brokers.

Q. Is that the first business transaction you ever had with Mr. Warner?

A. No, sir.

Q. What other business transaction did you have with Mr. Warner?

A. That is the first one I have had for a good long while.

Q. Will you answer my question?

A. I answered it in that way. That is the first transaction I have had with Mr. Warner for a good long while.

Question repeated.

A. When?

954 Q. You stated that was not the only one.

A. That is the only business transaction I have had with Mr. Warner lately.

Q. Now, I ask you what other business transaction you have had with Mr. Warner.

A. I have had a good deal of business with Mr. Warner in years gone by, in loans and different ways, but as for recalling the specific transactions I could not do it just at present.

Q. But there were a good many, you say?

A. Yes, sir.

Q. How extensively?

A. They covered a good many dollars, I reckon.

Q. How much was involved in this last transaction?

A. This transaction involved $45,000.

Q. And you say you were just completing that transaction?

A. No, sir; I did not.

Q. I ask you were you just completing that transaction at that time that Mr. Warner requested you to come around here and testify.

A. I was reporting to Mr. Warner the fact that the offer had been accepted. He did not ask me to come and testify. He asked me if I was familiar with the property at the corner of New Hampshire avenue and Q.

Q. That was the first time he spoke to you about this property was it?

A. Yes, sir; he simply handed me the plat. That was all. I asked him some questions and he said he had nothing to say. I went and examined the property myself on last Sunday.

Q. What were the questions you asked him?

A. I merely asked him what was the object or what is this, and his reply was he had nothing to say.

Q. Did he tell you he wanted you to testify?

A. No, sir; he did not.
Q. Did he tell you he wanted your appraisal of the property?
A. No, sir; he did not.
Q. What did he tell you he wanted?
A. He did not tell me anything.
Q. How did you know what he wanted?
A. I took it for granted that there was something going on and told him if I could be of use to him he was welcome to my services.
Q. What did you suppose you were going to look at the property for?
A. I went up there of my own volition simply to examine the property to see if there had been any material changes.
Q. Was it not for the purpose of appraising it?
A. If I was requested to do so; yes, sir.
Q. Will you not kindly tell us how you knew what Mr. Warner wanted if he did not tell you?
A. I just answered that question.
Q. You say he did not tell you he wanted you to appraise it?
A. He did not.
Q. How did you know what he did want?
A. I tell you I took it for granted that there was something on hand, and I went by to examine the property, and I told him if I could be of any service to him he could command me.
Q. Did you not know he wanted your opinion of the value
955 of the property?
A. I took it for granted he did. He did not tell me he did.
Q. What made you take it for granted?
A. We sometimes take things for granted, I reckon. I took it for granted simply as I would most any other case of the kind.
Q. What was it he said to you that made you take it for granted?
A. I have just answered you, that he did not say anything to me at all except hand me that plat.
Q. He did not say another word?
A. He may have asked me if I knew the property, but outside of that, nothing.
Q. He just handed you the plat?
A. Yes, sir.
Q. Did he not ask you what you thought it was worth?
A. No, sir; he did not.
Q. When a man hands you a plat of property, do you always go up and examine it?
A. Nearly always; yes, sir.
Q. Just when a man hands you a plat of property you just go right off and examine it, do you?
A. Very frequently.
Q. And so you did go up and examine it and saw Mr. Warner again, did you?
A. Yes, sir.
Q. And when you next saw him you told him if you could be of

any service to him, if you could be of any use to him, you would be very glad to give him your services?

A. Yes, sir.

Q. When did you tell him that?

A. Either Monday or Tuesday of this week.

Q. What was the occasion of your seeing him?

A. I went down there to ask him something in regard to the matter he and I had on hand. I did not go there for this specific purpose.

Q. You went there in regard to the business you were transacting together?

A. Yes, sir.

Q. On joint account; is that right?

A. You can construe it joint account or any other way, whichever you like.

Q. And when you told him that if you could be of any service to him you would be very glad to give him your services, what did he say to you?

A. He said if he needed me he would call on me.

Q. Did you understand what he meant by that?

A. Well, yes.

Q. Did you understand by that that he meant if he needed you as a witness he would call on you?

A. Why, certainly.

Q. What made you understand that?

A. I suppose a little common, ordinary sense made me understand that.

Q. Did you know he had a lawsuit?

A. I heard afterwards he had a lawsuit; yes, sir.

Q. You did not know that at the time?

A. At the time he first spoke to me, no, sir.

Q. At the time he told you if he wanted you he would call on you?

A. Yes, sir; I knew it then.

Q. Where did you learn that?

A. Outside.

Q. Whereabouts?

A. I learned it outside of his own office and also from one of his clerks in his office.

Q. What clerk?

A. I don't know his name; I did not ask his name.

956 Q. What did the clerk say to you?

A. He merely told me there was a lawsuit on hand. I told him I did not care for the particulars. I simply wanted to know what this was; that was all. I did not get the particulars.

Q. What what was?

A. What this proceeding was.

Q. What proceeding?

A. Proceedings that this plat referred to in connection with property.

Q. You talked to the clerk about the plat then, did you?

A. No, sir; I did not. I asked him what it was, what was on hand, and he told me there was a lawsuit concerning the property. I told him I did not care for the particulars.

Q. Have you any idea who that clerk was?

A. I can take you up there and show him to you, but I don't know his name. I did not ask his name.

Q. Then when did Mr. Warner notify you he would want you to come around here?

A. Today.

Q. How did he notify you?

A. He just simply said if I was down about Mr. Mattingly's office this afternoon to drop in.

Q. He said that to you?

A. Yes, sir.

Q. Where did he say that to you?

A. At his office.

Q. You were at his office again?

A. Yes, sir.

Q. What were you doing there again?

A. Concerning the property we had on hand and the sale we had on hand.

Q. You went there to see him again concerning this business matter you were interested in; is that it?

A. Yes, sir.

Q. And it is your opinion, is it, that that northwest corner of New Hampshire avenue and Q street is only worth $4 a foot; is that right?

A. I stated I thought it was worth from $4 to $4.50 a foot when Mr. Warner bought it.

Q. When was that?

A. In 1896, I believe.

Q. Who told you that Mr. Warner bought it?

A. Mr. Mattingly told me just now when he asked me the question. I do not believe it would bring that today if it was put up at auction.

Q. Do you mean to say Mr. Mattingly told you that Mr. Warner bought that property?

A. No, sir; I do not mean to say Mr. Mattingly told me that Mr. Warner bought that property.

Q. Is not that just what you said?

A. No, sir; Mr. Mattingly asked me the question about the value of the property.

Q. When did he ask you?

A. Just a few minutes ago.

Q. Did you not just say that you learned from Mr. Mattingly that Mr. Warner bought that property?

A. That I learned from Mr. Mattingly that Mr. Warner bought it.

Q. Is not that what you just said?

A. No, sir; I don't think I did.

Mr. KEANE (to the examiner): Read to the witness the question

and answer in which he just said that he learned from Mr. Mattingly that Mr. Warner bought that property.

The examiner re-d as follows:

957 "Q. Who told you that Mr. Warner bought it?

"A. Mr. Mattingly told me just now when he asked me the question. I do not believe it would bring that today if it was put up at auction."

Mr. KEANE: Now, the examiner having read to you the question that I asked and the answer that you just made to me, in which you stated that you learned from Mr. Mattingly that Mr. Warner had bought that property, do you wish to withdraw that answer or do you still say that that answer is true?

A. I have no wish to withdraw it.

Q. Is that answer true or not true?

A. Mr. Mattingly asked me the question just now——

(Question repeated.)

A. —and I answered it accordingly.

Q. Is that answer true or not true?

A. That Mr. Mattingly told me?

Q. Yes.

A. Mr. Mattingly told me by asking me the question.

Q. Is it true or not true what you have just stated, that Mr. Mattingly had told you that Mr. Warner had bought that property?

A. Mr. Mattingly told me a few minutes ago.

Q. When did he tell you so?

A. A few minutes ago; right here in this room.

Q. Before this examination commenced?

A. No, sir.

Q. While this examination has been going on?

A. Yes, sir.

Q. While you have been testifying?

A. He told me by asking me the question what the property was worth in 1896, when Mr. Warner bought it—April, 1896. If you can construe it that way that he told me, all well and good.

Q. You think Mr. Mattingly asked you such a question, do you?

A. He did ask me that question.

Q. He did ask you that question?

A. Yes, sir.

Q. That is what you think?

A. Yes, sir; I think he did.

Mr. KEANE: Now, I will ask the examiner to read to you the whole of your direct examination. It is very short.

The examiner read as follows:

"By Mr. MATTINGLY:

"Q. State your name, residence, and occupation.

"A. I am 53 years old; Washington city; real estate.

"Q. How long have you been engaged in the real-estate business in this city?

"A. About 20 years.

"Q. Are you generally familiar with the values of real estate here?

"A. Yes, sir.

"Q. Do you know the property at the northwest corner of New Hampshire avenue and Q street?

"A. Yes, sir.

"Q. Lots 1, 2, 3, and 66, in square 134? I hand you a plat of this property.

"A. (After examining plat.) Yes, sir.

"Q. Please state what, in your opinion, that property was worth in April, 1896.

"A. I think it was worth from $4 to $4.50 a foot."

Mr. KEANE: The examiner having now read over to you
958 all the questions that Mr. Mattingly asked you and your answers thereto, do you still think that Mr. Mattingly told you in any question that he asked that Mr. Warner had bought that property?

A. Yes, sir.

Q. Which question was it?

A. When he asked me the value of the property in April, 1896, I think, was the question.

Q. And asking you what the value of that property was in April, 1896, was informing you, was it, that Mr. Warner had bought it?

A. It was in a measure. Mr. Warner is being sued, I believe, for this, and he certainly would not be sued for it if he did not own it.

Q. Who told you that?

A. I cannot recall just at this moment who did tell me. I am certain that that is the fact, though.

Q. Please try and recall who told you that.

A. I think Mr. W. H. Coffin, who has an office in the Loan and Trust building. He told me that on Sunday, when I met him up there right in front of the property. I asked him the question who owned the property, and he told me Mr. Warner.

Q. He told you that Mr. Warner was being sued for it, did he?

A. He did not.

Q. My question was to state who told you that Mr. Warner was being sued for the property.

A. I stated that myself. Nobody told me that he was being sued for it. I said just now I presumed by his being sued that he must own the property.

Q. I asked you where did you learn that he was being sued.

A. I have answered your question.

Q. What was your answer—who told you?

The WITNESS: The examiner will read to you my answer.

Q. You stated at first that Mr. Mattingly told you. Now, if Mr. Mattingly did not tell you that Mr. Warner had bought this property, who did tell you?

A. Mr. Coffin on Sunday told me that Mr. Warner owned the

property. Mr. Mattingly in asking me the question virtually told me that Mr. Warner had owned it since April, 1896.

Q. So you still think, do you, that Mr. Mattingly told you that Mr. Warner owned that property?

A. No; I do not think so.

Q. I am glad to learn that. What else did Mr. Coffin say to you?

A. He said a lot to me, but not concerning this property.

Q. Did he say anything else concerning this property or Mr. Warner?

A. No, sir; nothing particularly; nothing special.

Q. Did he tell you that Mr. Warner had bought the property?

A. Yes; he told me Mr. Warner owned the property.

Q. Did he tell you Mr. Warner had bought the property?

A. I don't know whether he said he had bought it or not. He said he owned it, and I presume he bought it.

Q. Did you close that transaction up today?

A. No, sir.

Q. One moment. Please wait until you hear the question. Did you close that business transaction up today in which you and Mr. Warner are interested together, when you were around at his office, when he asked you to come here and testify?

A. No, sir; we did not.

959 Q. It is not closed up yet?

A. No, sir.

Q. When do you expect to close it?

A. I could not answer that question. We looked for it almost every day.

Q. What is it that prevents its being closed up just now?

A. The prevention is simply because the deposit has not yet been made, nor have the papers been ordered from the title company. The proposition has been made and accepted.

Q. What remains consists simply in the details usual in closing up such a transaction; is that right?

A. Yes, sir.

Q. And so when Mr. Warner handed you the plat of that property, for some reason you are unable intelligently to explain you imagined that your opinion would be wanted of the value of that property, and so you went to the spot in order to examine it; is that right?

A. Yes, sir.

Q. And you did that of your own accord, without even having been requested to do it; is that right?

A. That is right.

Q. And when you saw Mr. Warner again you volunteered to give him your services if he desired them; is that right?

A. That is right.

Q. What made you so anxious to serve Mr. Warner?

A. I don't know that I was anxious at all.

Q. What made you so willing to be of use to him?

A. Simply as one friend would be to another; that is all.

Q. Is Mr. Warner a friend of yours?
A. He is.
Q. How long has he been a friend of yours?
A. About 25 years I reckon; maybe more.
Q. Then you simply wanted to serve him as a friend? Is that right?
A. That is right; yes, sir.
Q. Do you know the complainant?
A. I do not.
Q. You are not a friend of hers, are you?
A. Yes, sir; I am, although I do not know her.
Q. You are not even an acquaintance of hers, are you?
A. No, sir.
Q. You are a perfect stranger to her, are you not?
A. Yes, sir.
Q. What familiarity have you of values of property up in that locality?
A. I am tolerably well posted.
Q. You are tolerably well posted, are you?
A. Yes, sir.
Q. You are familiar with the sales that have taken place up there?
A. Somewhat.
Q. For how many years back?
A. Ten or fifteen.
Q. And do you base your opinion that that property was only worth four dollars to $4.50 per square foot in 1896 on your familiarity with the sales that took place in that locality around that time?
A. Yes, sir.
Q. Did you ever hear of the Church of the Holy Cross property?
A. Yes, sir.
Q. That is on P and Eighteenth street, is it not?
A. Yes, sir.
Q. Just one block distant from this property?
A. Massachusetts avenue, Eighteenth and P streets.
Q. Just one block distant from this property, is it not?
A. One block south; yes, sir.
960 Q. What was the last sale of that property?
A. I don't know exactly when it was sold.
Q. You do not know when that property was last sold?
A. No, sir; I do not.
Q. That is rather a prominent piece of property up there, is it not—that triangle?
A. Yes, sir.
Q. Do you think you could be very familiar with the sales of property up in that locality without knowing of the sale of that property?
A. I knew of the sale of the property, but I cannot give you the date of the sale.

CLARENCE F. NORMENT, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. MATTINGLY:

Q. Where do you reside?
A. I reside in Washington.
Q. You have lived here all your life, I believe?
A. Barring a few years; yes, sir.
Q. State what your business is.
A. I am in the real-estate business.
Q. Also president of a bank, are you not?
A. I am president of the Central national bank.
Q. State whether or not you are a large real-estate owner in the city of Washington.
A. I do not know what you term large real-estate owner. I own considerable real estate in Washington and have owned considerable.
Q. Are you connected with the building association?
A. I am at present connected with the building association.

By Mr. KEANE:

Q. What building association?
A. I am president of the Home Mutual Association—a new association. It is not a very old one.

By Mr. MATTINGLY:

Q. The business of that association is loaning money on real estate?
A. Yes, sir; also that association has loaned very little. It is only recently that this building association——

By Mr. KEANE:

Q. To what association do you refer now?
A. The Home Mutual Association, an association which has recently started here in Washington.

By Mr. MATTINGLY:

Q. I believe you are also connected with the American Security and Trust Company?
A. I am a director in the American Security and Trust Company and several other corporations here in Washington—fire insurance and electric light and several others.

Q. Are you generally familiar with the values of real estate
961 in this city?

A. I have handled a good deal of real estate in this city. I have bought and sold a good deal and have appraised a good deal, and I should think I ought to be very familiar with real estate in Washington.

Q. This property at the northwest corner of New Hampshire avenue and Q street, shown on the plat there, lots 1, 2, 3, and 66, in

square 134—state what, in your opinion, that property was worth in April, 1896.

A. In my opinion, that property was worth, the two lots on New Hampshire avenue—I see a dividing line. I do not know whether there are two lots or not.

Q. Four lots; the question covers four lots. You can answer in your own way.

A. I should value this lot on New Hampshire avenue, 46 feet and 23 feet 7 inches on Q street, at $4 a foot. That is what I would appraise it at if I were asked to appraise its value in April, 1896.

Q. That is the question.

A. Yes; about the same. The other property I should value at from $3.25 to $3.50 a foot.

Cross-examination.

By Mr. KEANE:

Q. Were you subpœnaed?

A. I was not subpœnaed. I came here at the solicitation of Mr. Warner—that is, he asked me if I knew the value of this property and asked me if I would testity as to its value—give him my opinion as to its value.

Q. When was that?

A. Several days ago.

Q. Where was that?

A. At my bank.

Q. What was Mr. Warner doing there?

A. I suppose he came to see me on this business. I do not know of any other business. I suppose he was looking for evidence as to the value of this property; in fact, that could be the only reason. He had no other reason to come to see me.

Q. Were you surprised to see him when he came?

A. No, sir; I frequently meet Mr. Warner. He has been to see me before, and I meet him on the street, and I have been at his office. I have had some business transactions with him.

Q. What business transactions?

A. I sold a piece of property for Mr. Warner once, some years ago, and we frequently came in contact with each other in reference to real-estate matters and tenants, and then we have been on very friendly relations, cordial and friendly.

Q. How long?

A. Ten to fifteen years, I guess; ever since I have known Mr. Warner.

Q. Please state exactly what he said to you fully.

A. As near as I can?

Q. As fully as you can.

A. Mr. Warner handed me a plat similar to this, not this plat, though, and asked me what my opinion was as to the value of that property. At the time Mr. Warner handed me that paper I did not know he was the owner of the property. I do not know that

962 he is today, but I judge he is, and I told him that I thought that corner lot there was worth $4 a foot, and the other two lots were worth about from $3 to $3.50.

Q. You told him then and there in that offhanded way?

A. Yes, sir; I am familiar with this property. I drive by it nearly every day.

Q. You responded like that at once, did you?

A. Yes, sir; only my own opinion, of course. I am only giving my opinion as to the value of the property.

Q. It was an offhanded opinion?

A. Yes, sir; since then I have taken occasion to go up and look the corner over, and I have not changed my opinion any.

Q. How much time have you given to the consideration of the subject since then?

A. I suppose about twenty minutes. I went out there once since then to sort of familiarize myself with the surroundings there. Of course, I was familiar with them, but I went back to refresh my mind as to the general surroundings.

Q. Just the twenty minutes you have stated?

A. I will not say twenty minutes. I do not think I stopped on the corner five minutes, or maybe not more than three minutes.

Q. That covers all the time you have given it?

A. To this particular place. I have appraised the values of property through there for the last ten years.

Q. Now, what has been the condition of the market during the last three or four years? Has it been just about in the same condition?

A. I think the conditions are just about the same; yes. I do not see very much improvement. There are some few sales made, but they are made at very low prices.

Q. Have you heard of the sale of property between the Leiter house and the Whittemore house?

A. I have not, except what was brought out in the cross-examination of the other witness. I do not know the owner of that lot. I do not know that it was sold, and I do not know the price that it brought.

Q. Did you hear of the sale of the northwest corner of New Hampshire avenue and R street to Mr. Page?

A. Only from hearsay; that is all. I have no knowledge of the facts whatever.

Q. Did you hear what he had bought it for?

A. I heard he paid $6 a foot, but I do not pay much attention to what I hear on the streets with reference to the prices of real estate. Frequently they are deeded a great deal higher than they bring, sometimes.

Q. That property of Mr. Page on the northwest corner of New Hampshire avenue and R street, how do you think it compares with this property on the northwest corner of New Hampshire avenue and Q street?

A. What is the size of Mr. Page's lot there?

Q. It is 5,626 square feet.

A. How does that front on New Hampshire avenue? Have you any objection to my looking at it?

Mr. KEANE: Not in the least.

Q. (After looking at plat book.) It is 62 feet on R street and — feet on New Hampshire avenue.

963 A. Now, I will answer this question by stating that I did not go there to look at Mr. Page's house. I only went on this particular corner, but I should say in my judgment there was very little difference in the values of those two lots.

Q. What would you say if the Page property is surrounded by vacant land on the three opposite corners—an entire vacant space on all sides, the buildings being the exception?

A. That would not very materially change my opinion in regard to the comparative values of the property. That being in such close proximity to other nice improvements, it is reasonable to suppose that when improved it will be improved with the same class of property. It might make some little difference.

Q. In favor of what property?

A. In favor of the Page property if anything. I mean in price.

Q. Which property would you consider more valuable—the property surrounded by waste land or property surrounded by elegant improvements?

A. Property surrounded by waste land I do not think would be as valuable. I do not think in this instance it would make much difference, because that is in such close proximity to improved locality.

Q. Whatever difference there is would be in favor of the northwest corner of New Hampshire avenue and Q street?

A. I should think it would with the improvements in that locality. I would give it in favor of that property. The hearsay consideration of the Page property would not materially change my opinion as to its value at all.

Q. It is not hearsay, because it has been testified in this case that it sold for more than that.

A. So far as my knowledge is concerned, it is hearsay. I have no knowledge of the facts of the case.

Q. You consider that the buildings which surround this northwest corner of New Hampshire avenue and Q street on the other four corners are of a handsome, beautiful character?

A. Decidedly so; very handsome; the Clover building and Whittemore's, and there is a very nice building by the side of this lot, and one opposite; several very handsome residences surrounding this corner, except there are small houses on the west of this—several houses—and then there is a shanty up on Q street.

Q. Then the Davidson house is a very nice house?

A. Which is Davidson's house? Oh, yes; I know it.

Q. It is on Q street, which bounds this property on the west.

A. That is a fairly nice house. It is not what you call a palatial residence.

Q. It is not a palatial residence, like the Whittemore house or any of those corners?

A. No, sir; it does not compare with Whittemore's house.

Q. But it is a very comfortable house?

A. Yes, sir; it is a very comfortable house.

Q. And the same is true of the houses on New Hampshire avenue northwest there, on the side called the Clover house?

A. Yes, sir.

Q. Do you know whether there was a sale of that Hooe property?

A. Not as a matter of my own knowledge.

964 Q. You do not?

A. As hearsay I do.

Q. A foreclosure sale?

A. I do not know whether it was a foreclosure sale or not (indicating on map). Do you mean this property here?

Mr. KEANE: Yes; New Hampshire avenue and R street is the Hooe property.

Mr. MATTINGLY: Square north of 153, I think.

The WITNESS: This is the property I thought you were referring to (pointing to the northwest corner of Sherman street and Eighteenth). I know of sales in that square.

Q. But you do not know of any foreclosure sale of that Hooe property?

A. I do not.

Q. Do you know what Mr. Whittemore paid for his property?

A. I do not.

Q. Which is the finer corner, this northwest corner or the Whittemore corner?

A. If they were both vacant you mean, of course?

Q. Yes; which is considered the finer?

A. That would depend entirely upon its shape. I do not remember the shape of the Whittemore house. The number of square feet in it, the frontage, I would prefer to have the Whittemore corner now as it stands today, the same number of feet, than I would the other corner.

Q. I intended to ask you which corner is usually considered the most valuable.

A. The northwest is usually considered the most valuable.

Q. Do you consider that vacant land is enhanced by the erection of costly residences?

A. I do.

Q. You consider that this northwest corner became more valuable by reason of the erection of the Whittemore house than it was before the Whittemore house was built?

A. Yes; unless it had other palatial residences around it already erected.

Q. Would you consider that it also became more valuable by the erection of the Clover house?

A. I would.

Q. And would you think also that the erection of the Schneider house would have a tendency to enhance its value?

A. All improvements I think would have a tendency to enhance the value of that property; yes, sir. I mean all good improvements in keeping with it.

Q. Those are unusually elegant improvements, are they not?

A. Yes, sir; they are very fine houses. It is considered about the best location in Washington up there around Dupont circle.

Q. There is hardly any corner choicer than this northwest corner of New Hampshire avenue and Q street for residence purposes in Washington?

A. Oh, yes.

Q. Is it not a very choice corner?

A. It is a very choice corner, but I think possibly a corner on Dupont circle would be of more value.

Q. Some of the witnesses here, at least one which the defendants produced, said that he thought the property situate a little off Dupont circle was more advantageous, because it was, I recollect, more secluded.

A. Away from the railroad tracks?

965 Q. Yes.

A. The railroad track does not run all around Dupont circle.

Q. Would you think, being such a short block between this northwest corner of New Hampshire — and Q and Dupont circle, that this northwest corner really enjoyed all the advantages that would be enjoyed on Dupont circle?

A. No; I could not say that. If I was offered two lots of the same dimensions with the same surroundings, one on Dupont circle and one on the corner of Q and Eighteenth, I would take the Dupont Circle lot.

Q. And, on the other hand, do you not think there are some people who might prefer to be just a little further away?

A. I do not know. There might be others, but I am only expressing my opinion in the matter.

Q. You are speaking of your personal partiality?

A. No; I think property would bring more.

Q. That is what we want to get at.

A. Yes, sir; I think it would bring more, the same lot. I know it would bring more than the Q Street property, because Q street is not regarded——

Q. (Interposing.) We are not speaking of Q street.

A. This is on Q street.

Q. No; it is on the corner of New Hampshire avenue and Q. Regarding it as one piece of property, would it not be suitable as one piece of property for the erection of a handsome residence or for the erection of an apartment?

A. Oh, yes; it is well adapted for either purpose.

Q. Would it not be more valuable for the purpose of a handsome residence or a single apartment house than it would be if divided up and treated separately; don't you so think?

A. That would depend upon circumstances. You often get a purchaser who wants just a little more than you have. In your

case it would be more valuable, but there is a greater number of people, in my judgment, who would pay a bigger price for that divided into small lots than to take it as a whole. I mean it would be more marketable. There are times when you might get a purchaser who would give you considerably more for that. He would not have it as one lot, though. I do not know whether you comprehend what I mean. I try to be as plain as I can.

Q. Yes; you are very clear. Are you acquainted with Mr. James E. Fitch?

A. Of Fitch, Fox & Brown?

Q. Yes.

A. Yes, sir.

Q. How does he stand as a real-estate man in Washington?

Mr. MATTINGLY: Objected to as immaterial.

A. I do not know how he stands as an appraiser of real estate—the value of it. I know Mr. Fitch as being a very prominent and very reliable, elegant gentleman. I do not know what his ability is, and never came in contact with him in a real-estate transaction that I can remember, but I may have. I have dealt very largely in real estate. I do not remember how many I have come in contact with.

966 Q. Have you ever come in contact with Mr. Warner in a real-estate transaction?

A. Yes; I have.

Q. Did you ever come in contact with Mr. Dulaney?

A. No; not directly. The only transaction in which I was ever connected with Mr. Dulaney was in the sale of a house in which he was trustee—I believe the Oxford hotel.

Q. How does he stand?

A. Very well, so far as I know. I have never heard anything against Mr. Dulaney.

Q. Have you ever come in contact with Mr. William H. Saunders?

A. I know him by reputation very well. I never came in contact with him.

Q. How does he stand?

Mr. MATTINGLY: All this is objected to as immaterial.

A. He stands very well as far as I know. I have heard nothing against him. I have never heard anything against any of these gentlemen you have mentioned either as to their ability or as to their integrity in real-estate transactions.

Q. How does Captain Tyler stand, do you know?

A. The firm of Tyler & Rutherford have loaned a great deal of money in Washington and I know nothing against their judgment in real estate at all.

Q. When did the Church of the Holy Cross property sell, do you know?

A. It has been some time ago. I do not recall the date of it. I have no knowledge of that sale except hearsay street talk. I under-

stood it sold for $8 a foot, I believe, but I have no absolute knowledge of that fact.

Q. Did Mr. Warner tell you he had this property on his books for sale for $55,000?

A. No, sir; I did know the property was for sale. I think I saw the sign-board on it a long while ago, but I never spoke to Mr. Warner in reference to this property and did not know that he owned it or had any connection with it other than a real-estate agent until he spoke to me about it recently; I mean when he asked me to value this property. He asked for my judgment as to the value.

Q. Did he tell you how he had got the title to it?

A. He did not.

Q. Or rather how the title to it had been taken in the name of a young man by the name of Louis W. Richardson?

A. No, sir; I did not know that Mr. Richardson had title to it and I do not now, as a matter of fact, know that the property belongs to Mr. Warner, as I tell you.

Redirect examination.

By Mr. MATTINGLY:

Q. Do you know whether it is usual or an unusual thing here to take title to property in other than the name of the real owner?

A. No, sir; it is not unusual; it is frequently done.

967 Recross-examination.

By Mr. KEANE:

Q. State whether it is customary or usual here to take title in the name of a dummy, and when a suit is brought against the dummy to have the deed set aside as void and fraudulent, the grantor having been convicted of obtaining the property by fraud, and being in State's prison for the offense, to procure the dummy who gave his consent to the use of his name—I say to procure him to put in an answer, in which he holds himself out as the real purchaser of the property, and as having parted with value for it, and holds out the party who is the real purchasee as simply having acted as his broker, and conceals the fact that the party whom he thus holds out as having been the (party) broker is the real purchaser. Is that customary?

A. No; I never heard of such a case.

CLARENCE F. NORMENT.

Sworn to and subscribed before me this 24th day of May, A. D. 1898.

ROB'T L. MILLER,
Examiner in Chancery.

THOMAS E. WAGGAMAN, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. MATTINGLY:

Q. State what is your business.

A. Real-estate broker and auctioneer.

Q. How long have you been engaged in that business in this city?

A. A little over thirty years.

Q. Are you generally familiar with the values of real estate in the District?

A. Fairly familiar.

Q. Look at that plat before you of the property at the northwest corner of New Hampshire avenue and Q street, lots 1, 2, 3, and 66, square 134. State what, in your opinion, that property was worth in April, 1896.

A. I should think from $4 to $5 a foot.

Q. State whether or not it is an usual or unusual thing for the title to real estate in this city to be taken in the name of some one other than the real purchaser.

A. I do it very frequently myself.

Cross-examination.

By Mr. KEANE:

Q. Is it customary and usual where property is taken in the name of a dummy and a suit is brought to have the deed set aside as fraudulent and void, the grantor being in State's prison, convicted of having obtained the property by fraud, to procure the person in whose name the property has been taken to put in an answer under oath, in which he holds himself out as the purchaser of the property and as having parted with value for the same, and holds out the persons who are the real purchasers as his brokers, and conceals their true connection with the transaction? Is that customary?

968

A. No.

Q. How did you happen to come here as a witness? Were you subpœnaed?

A. No, sir; I was not subpœnaed. Mr. Warner asked me to come.

Q. When was it he asked you?

A. I do not know; about a month ago, I reckon.

Q. Where?

A. He sent me a letter.

Q. Did you answer it?

A. No; I saw him, I think.

Q. Was it a letter simply about coming here as a witness or other matters, too?

A. No; with a plat in it. He asked me to see the property.

Q. You say you saw him afterwards?

A. I saw him afterwards.
Q. How long afterwards?
A. I suppose a week or ten days afterwards.
Q. Where?
A. I think he came to my office.
Q. He simply came to see you on this subject?
A. Absolutely; that is all.
Q. Have you ever met him before?
A. Oh, yes.
Q. Do you know him?
A. Very well. We are in the Columbia bank together as directors, and then he had an office on Seventh street, just above me when I was on Seventh street. I suppose it must have been 20 years ago. Of course, I cannot say just exactly 20 years, but I should think about that time—fifteen or twenty years ago.
Q. When was your first acquaintance with him?
A. About that time.
Q. Have you seen him, then, very frequently since then?
A. I do not know what you call very frequently. Every now and then I meet him in the street and every now and then I see him in the bank. I cannot get him to come to my house, although I have invited him to come to see my pictures, but he has never been there. Personally I do not think we gee very well.
Q. Perhaps he is not a lover of art.
A. I don't know. He has never seen the pictures, so I cannot tell that.
Q. What did he say to you when he saw you?
A. He said very little, indeed; merely that he wanted me to testify. He asked me to see the property.
Q. Did you go to see it?
A. I went to see it.
Q. When did you go to see it?
A. I think I have been by there half a dozen times.
Q. Did you go expressly to see it?
A. I went expressly to see it.
Q. Do you know how many square feet it contains?
A. I added it up this morning on the plat he sent me; I think 1,300 square feet; a little over that, maybe.
Q. Would you consider it a choice piece of property?
A. Oh, very good.
Q. Would you consider it a fine corner for an elegant residence?
A. First rate.
969–1003 Q. Would you consider it as good a corner as the northwest corner of New Hampshire avenue and R street, where the Nelson Page property is?
A. I want to tell you the truth about that, because I am a little prejudiced against that property; I owned some prop-rty there that I lost some money on; I am hardly a fair witness; I lost some money near Nelson Page's property—some 140 feet—and I do not like that location; I would rather have the location you have got.
Q. Are there any other reasons why you would rather have the

corner of New Hampshire avenue and Q than the northwest corner of New Hampshire avenue and R besides those you have mentioned?

A. I do not know whether it is a colored school, but there is a school down on, I believe, New Hampshire avenue and Seventeenth street, just opposite to where I have two houses, near Mr. Page's, and that is a public school on the south side.

Q. That is near Nelson Page's corner?

A. On the opposite side of the street.

Q. Half a block away?

A. Yes, sir.

Q. Was that there when Mr. Page bought his property?

A. I think so.

Q. Would you consider this northwest corner of New Hampshire avenue and R street also more desirable and more valuable than the northwest corner of New Hampshire avenue and Q because it is nearer Dupont circle?

A. Yes.

Q. And would you also consider it more desirsble and valuable because of the elegant and costly houses that are built around it?

A. Certainly.

Q. Did you ever hear of the sale of this Hooe property under foreclosure being the triangle at Eighteenth street, R, and New Hampshire avenue?

A. No.

Q. You do not know of that sale, do you?

A. No, sir.

Q. Did you know what Mr. Page paid a square foot for his property?

A. I do not.

Q. You never heard of that?

A. No, sir; the Church of the Holy Cross is the only one I have heard about; they paid $8 there; not from my own knowledge, but I merely heard it.

Q. If you had been very familiar with the sales of property in that location about that time don't you think you would have heard about the sale of the Page property and how much he paid for it?

A. Not necessarily.

Q. Do you not think you would have heard of the sale of the Hooe property?

A. I do not think so.

Q. Did you hear of the sale of the property between the Leiter house and the Whittemore house?

A. No.

Q. Do you not think if you were very familiar with the sales of real estate up in that locality that you would have heard of that?

A. I do not think so.

T. E. WAGGAMAN.

* * * * * * *

1004 WALTER R. WILCOX, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. MATTINGLY:

Q. State where you reside.
A. No. 1724 Twentieth street northwest, Washington city.
Q. How long have you lived in this city?
A. I have lived here 35 or 36 years.
Q. Are you a native of the place?
A. Not exactly. I came here quite young.
Q. What business are you engaged in?
A. The real-estate business.
Q. How long have you been engaged in that business?
A. I have been engaged in that business about 18 or 19 years.
Q. Are you generally familiar with the values of real property in the city?
A. Well, I have been connected with real-estate transactions for a good many years. I try to keep posted on values.
Q. Are you familiar with the property at the northwest corner of New Hampshire avenue and Q street, being lots 1, 2, 3, and 66, in square 134?
A. In a general way; yes, sir.
Q. I show you a plat of the property (handing witness plat).
A. Yes, sir; I know that property.
Q. State what, in your opinion, that property was worth in April, 1896.

1005 Mr. KEANE: Objected to on the ground that no proper foundation has been laid to qualify this witness as an expert as to the values of real estate.

The WITNESS: That is a pretty good objection. Well, as a whole or single?

Q. As a whole.
A. I would not consider that property worth more than $4.50, taking it as a whole.
Q. About $4.50, as I understand you, then, is a fair and reasonable valuation of that property as a whole at that time?
A. Yes, sir. It is, in my opinion.

Cross-examination.

By Mr. KEANE:

Q. Do you offer that as a guess?
A. I stated that was my opinion.
Q. What is your method of getting at that figure? Do you guess it? What do you base it upon, if anything?
A. Well, in a general way, the value of real estate would be based very largely at what it might be used for, whether it was a matter of investment, whether it would pay an interest at a certain figure, or whether it was a fancy of somebody who just liked the particular

location. Those are the things which in my opinion I largely base it upon.

Q. You do not think that the price at which other property sells in the same neighborhood at the time is a test of the value in the market?

A. Not always; not as a rule with me.

Q. Not as a rule with you?

A. No, sir.

Q. You find that property in a given neighborhood is selling at a given time for so much a square foot; that does not have any weight with you in forming an opinion as to what other real estate would sell for in the same neighborhood at the same time?

A. That is not the statement I made. It depends entirely upon the price that the other property is selling for.

Q. Please answer my question.

A. That is all the answer I can give you. I am trying to make clear to you what I am driving at. I do not know whether I do it, but that is an answer to your question.

Q. You do not think the market value of real estate at a given time in a given locality is best judged by what the property in that locality is selling for at that time, do you?

A. It is sometimes, and sometimes it is not.

Q. Are you familiar with the sales of real estate in that locality at or about the time concerning which you are testifying?

A. I do not remember that there were any sales at that time that might be a criterion of values in that immediate neighborhood.

Q. You do not remember of any sales?

A. I do not recall any just now. I might say I had occasion in February of 1895 to estimate the value of lot 4, I think. If I had the plat, I could be more explicit about it. Yes; lot 4, or, in other words, the lot adjoining lot 3 immediately on the west. As
1006 the appraiser for a large monetary institution in the city of Baltimore—myself and a coappraiser valued it at $2.50 a foot.

Q. Did I ask you that question?

A. You asked me if I had not had occasion to inform myself as to the values of property in that neighborhood.

Q. So you think that is an answer to any question I have asked you?

A. Yes, sir; I think it is.

Q. And your appraisal of that property at that time, was it based upon your knowledge of other sales in that neighborhood?

A. No; it was based more particularly upon whether that property would stand that sort of a value for the purposes for which I was making it, and would represent an investment of interest on a certain amount of money which would be generally my basis of value, as I stated before.

Q. Who asked you to come here and testify?

A. Mr. Warner.

Q. When?

A. Ten days ago, I guess. I really don't remember.
Q. Where?
A. At my office.
Q. How did he happen to be at your office?
A. I do not know how he happened to be there; he came there.
Q. What business did he come there in connection with?
A. Possibly just on that; I do not know; very likely he did.
Q. Don't you know he did not go there in connection with any other business except to ask you to come here and testify?
A. I do not know of any other business that he had.
Q. How long have you known Mr. Warner?
A. Twenty-five years.
Q. What have your relations been during that time?
A. Very pleasant.
Q. Have you had any business relations with him?
A. I do not believe I have had.
Q. In what way have you come together?
A. We have known each other, as everybody knows Mr. Warner. I do not believe I ever had a business transaction with him, strange to say, too.
Q. What have your relations been; what have been the relations that you have had with him, if you have had any at all?
A. I have known Mr. Warner, as I say, for a long number of years. I used to be a messenger in his office 25 or 26 years ago.
Q. You were a messenger in his office?
A. I never had any business transactions with him, I do not believe, since I have been in business.
Q. What kind of a messenger were you in his office?
A. A very indifferent one, I presume.
Q. You mean you carried errands?
A. I took up his rent cards, went on errands, and did all sorts of work of that kind.
Q. Twenty-five years ago?
A. About that time, I judge. It is not quite that long, say about 23 years ago.
Q. You and he are about the same age, are you not?
A. I really do not know how old Mr. Warner is.
Q. You said you are about 56?
1007 A. I did not say anything of the kind, to my knowledge. I am very touchy on that point. That is a very delicate question.
Q. Mr. Warner had not been in the real-estate business very long at that time, had he?
A. That I do not know. I think he had. I think Mr. Warner had been in the business probably eight or ten years before I went with him, but as to that I do not know. I do not know when he started or anything about it.
Q. Had he not been formerly a clerk in the War Department?
A. I do not know.
Q. And how long did you continue to be a messenger in Mr. Warner's office?

A. I was with Mr. Warner three or four years, I judge.
Q. Were you a messenger during all this time?
A. I am going back a good ways and my memory is not as good today as it was then. I beg your pardon; what was the last question?

Question repeated.

A. The last year or so I kind of divided my labors between messenger work and work inside the office. I learned all I could. I drew up deeds and things of that kind towards the last.
Q. How old were you at that time when you were messenger?
A. I do not remember.
Q. You were over twenty years old, were you not?
A. Yes; I think I was 21.
Q. What was the reason you left him?
A. I do not object to answering those questions, but they seem to me to be entirely unnecessary. They take up my time. I am about as busy as anybody now.

Mr. MATTINGLY: Use your pleasure. You need not answer if you do not want to.
The WITNESS: I have not the slightest objection to answering them. I am very busy and would like to do away with all unnecessary questions.

Q. Do you object to telling us why you left Mr. Warner?
A. No; not at all. I left him to go in business on my own hook. I told you I did not object to answering before you asked me if I did object.
Q. How old were you then?
A. I object to answering.
Q. How long were you in business for yourself?
A. How long was I in business?
Q. How long have you been in business?
A. I think I said eighteen or nineteen years.
Q. You continued right along after that in business for yourself?
A. I have; yes sir.
Q. How much business have you done in those eighteen or nineteen years?
A. That is a question I cannot answer; I do not know just what you mean. Do you mean the volume?
Q. How much real estate have you sold in Washington?
A. I cannot attempt to tell you. I could not tell you to save my life.

Q. Have you ever sold any real estate up in the locality of the northwest corner of New Hampshire avenue and Q street?
1008–1014

A. Now, I do not know whether I have.
Q. Was there any sale of property up in that locality in 1896?
A. I stated a moment ago I do not recall anything. I have no recollection of any particular sale.
Q. What was the condition of the real estate market in the spring

of 1896 as compared with the fall of 1896? Was it better or worse or about the same?

A. It was about the same.

Q. What was the condition of the real-estate market in 1895 as compared with 1896? Was it better or worse or about the same?

A. About the same.

Q. And you venture an opinion as to the value of this property without having knowledge of the price at which any of the property in that locality sold for during 1895 or 1896?

A. I venture to give you my judgment as to the value; yes, sir.

WALTER R. WILCOX.

Sworn to and subscribed before me this 1st day of June, A. D. 1898.

ROB'T L. MILLER,
Examiner in Chancery.

* * * * * * *

1015 ELLEN S. MUSSEY, a witness produced on behalf of the defendants Warner and Wine, having been first duly sworn, was examined, and testified as follows:

By Mr. MATTINGLY:

Q. What is your profession?

A. I am a practicing attorney in this city.

Q. Please state your first acquaintance with Stephen A. Dutton, the circumstances under which he came to you, and state in your own way chronologically all that transpired between you and him.

A. Mr. Dutton came to my office the 31st day of March, 1896, with a letter of introduction from a Mr. H. M. Twombly, of New York city, an old friend of mine and a class-mate in college of my husband; he requested me to do anything I could for Mr. Dutton, stating that he had real estate in Washington in which he might need my assistance.

Mr. KEANE: I object to any statement by this witness to the contents of a letter, unless it be first shown that the letter has been lost or destroyed, and Mrs. Mussey, being a lawyer, knows, of course, this rule of evidence.

The WITNESS: Mr. Dutton had with him a gentleman by the name of——

Mr. KEANE: I move that the testimony as to the contents of that letter be stricken out.

The WITNESS: Mr. Dutton had with him a gentleman by the name of Ezra Stirling; Mr. Dutton stated he had purchased certain property in Washington of Mrs. and Miss Godfrey, and he handed me deeds conveying a part oo that property. Mr. Stirling drew a diagram of the property, which was, as I remember, five lots on the corner of Eighteenth and Q street or New Hampshire avenue and Q street. He left the deeds with me for my opinion as to whether they were in due form and conveyed good title, and also to look up the title, and retained me as his attorney; I looked at the deeds

that night and found they were not in proper form, and the next day went out to see whether any money could be raised upon the property for Mr. Dutton; I went to Mr. John Joy Edson and laid the matter before him, stating that the four lots were encumbered by a trust of $17,500, and that the lot directly north of
1016 those four, with a large and handsome improvement, was not, as I understood, encumbered at all. Mr. Edson was familiar with the property, and while he considered that the encumbrance on the four lots of $17,500 was probably all that they would bear, he was of the opinion that, taking in the other lot, he could make a loan such as I desired on the entire property, taking up the old loans. I then went up to Fisher & Company to find out whether I could lift the note that they held on this property, and the gentleman whom I met said I could not, and that it was impossible for me to raise any more money on that property than had been raised, for it had already been encumbered to every cent it would bear; I asked him if he would be willing to allow that note to be taken up if I paid the interest to the day of maturity. He said of course, he could not help *my* himself, but that he did not see how I was going to raise the money on that property to do it with. I told him that the next lot, which, as I understood, my client had purchased of the Godfreys, was not encumbered and was valuable, and that I did not anticipate any trouble in getting a loan on the entire property sufficient to pay this and leave a balance in hand. Mr. Fisher, or the gentleman whom I saw—I do not know his name—told me that that north lot had never been in the name of Mrs. or Miss Godfrey, and that my client could not have bought it of them, and if he thought he had he had made a mistake. On investigation I found, on my return to the office, that there was no deed among those I had to that north lot, and on application to the tax office I found the property stood in the name of a Mr. Kidder. Mr. Dutton returned to New York, as I understood, that night, and I prepared the deeds and sent over to him for the signatures of Mrs. and Miss Godfrey. The next time I saw Mr. Dutton was on the 10th of April, when he came to my office in company with one F. M. Czaki, who was represented to me to be an attorney in New York city, and who represented a judgment creditor of Mr. Dutton. Mr. Czaki, in Mr. Dutton's presence, stated to me that it was necessary that Mr. Dutton should immediately raise and pay over to him the amount of the judgment, $5,400 or thereabouts, and that if he did not it would be the worse for him.

Upon this statement Mr. Dutton authorized me to raise the money at once upon this property. I failed entirely in my endeavors to make a larger loan upon the property, and having had it appraised by those whom I had applied to for loans, all of whom agreed in valuing it at not over $4 a foot at a forced sale, I finally, as there was haste required, went to the office of Messrs. Warner and Wine, knowing them to be large dealers who usually had clients with money to invest in promising real estate. I met in that office Mr. Wine and, I believe, Mr. Warner, but my business that morning was done entirely with Mr. Wine. I stated to him that I

had a client who was forced to sell his property to raise money, and that if no better could be done I would dispose of it for him, I thought—at least he would dispose of it for the net sum of
1017 $25,000. I asked Mr. Wine if, in his opinion, a larger sum could be raised on it within a day or so. He said he did not think it could. He then looked at the property on the map, I pointing out those four lots to him. I returned to my office and I think it was in the evening of the same day that Mr. Wine came to me with a contract or option for the sale of that property at $25,000, reciting a deposit of $500 and giving fifteen days to complete the sale. I told him that we would not sell the property on that length of time; that it would be either sold in three or four days at that price or not at all, and he changed it to five days, as I remember, and left the paper with me for the signature of Mr. Dutton. Mr. Dutton came to my office that same evening, and, after a conversation with him, he signed the paper for the sale of the property, and I delivered it to Mr. Wine. The next morning I went to Mr. Warner and Mr. Wine to see when they would complete the purchase, as it had been understood they would do that on Saturday. Mr. Warner said, "I see that property has been conveyed on the record to Mr. Dutton." I said, "Yes; he is my client, and that is the person from whom you will purchase the property, and I want to close it up today." Mr. Warner said they could not do it for a few days. I said, then we would not do it at all, for it would be a sale now or not at all; that he must have the money. I went back and had a conversation with Mr. Czaki, stating to him that it was understood that I would have some money for him on Monday. On Monday Mr. Dutton and his wife appeared in my office; also Mr. Czaki. Mr. Dutton and Mrs. Dutton and myself went to the office of the Columbia Title Company, and there the papers were executed for the sale of the property. Mr. Wine was introduced by me to my client, Dutton, and his wife, and after a brief consultation he returned and Mr. Edmonson completed the transaction. In the afternoon the deed was delivered to Mr. Edmonson, and Mr. Edmonson made out a statement and delivered the checks for the net amount of the sale after the deduction of accrued interest and taxes to Mr. Dutton. Mr. Dutton endorsed those checks and handed two of them to me, one for $300 and something for my bill and expenses, and one for $250, my share of the commissions for the sale of the property. He handed one of those checks for $500 for the commission of Messrs. Warner and Wine to Mr. Edmonson, and the other checks he took over to the Columbia national bank, on which they were drawn, and there I identified him as Stephen A. Dutton, and he received the cash for them. I returned to my office after having deposited my checks in the Second national bank and met Mr. Dutton as he was going down the stairs, and he stated to me that he would leave for New York on the next train. That is the last time I saw Mr. Dutton.

Q. When you applied to Mr. Edson for a loan upon the property, what was the amount of the loan that you desired?

A. I do not recall at this time. I should say that it was about

$40,000 for the five pieces of property. I do not recall the figures exactly.

Q. The lot with the improvement upon it you have spoken
1018 of, immediately north of this property in question here, fronting on New Hampshire avenue, was one of the five lots that Mr. Dutton claimed to own at that time?

A. That is one of the five lots.

Q. And it was those five lots that you offered to Mr. Edson as security?

A. Yes, sir.

Q. Do you know about the value of that northernmost lot that he did not own?

A. I do not. Mr. Edson was familiar with it, and stated that it was a very valuable lot and the improvements upon it were valuable.

Q. When you went to Warner & Company and offered the property for $25,000, what was said at that time about commissions?

A. I arranged with them that I should have one-third of the commissions.

Q. And the purchase price of the property was about $25,000, less commissions?

A. Less commissions.

Q. The usual commissions of three per cent.?

A. Yes, sir. I should like also to say that on my second visit, I believe, to the office of Warner and Wine, at the request of my client, I asked if they would be willing to give him the privilege of repurchasing the property within a given time at an advance of $5,000, and Mr. Warner declined to tie up the property in that way, which fact I reported to my client.

Q. Did you tell Dutton to whom you had sold the property, or agreed to sell it?

A. I must have done so at the time that I offered him the contract of sale.

Q. Did he claim to know Mr. Warner?

A. He did not.

Q. Did Mr. Warner know him?

A. He did not state to me that he did. Mr. Dutton did not know whom I was going to go to to sell the property.

Q. Did he authorize you to make the sale for that amount?

A. He signed the contract himself.

Q. Did not Mr. Warner ask you who Mr. Dutton was?

A. He did, and I stated to him that he came to me with this letter of introduction from an old friend of my husband.

Cross-examination.

By Mr. KEANE:

Q. Will you please produce the letter of introduction to which you have referred?

(The witness here produced it.)

Mr. KEANE: I offer this in evidence.

"ALPHA DELTA PHI CLUB,
35 WEST 34*rd* STREET, NEW YORK, *March* 30, 1896.

DEAR MRS. MUSSEY: This will introduce to you S. A. Dutton, Esq., of this city. He is to leave for Washington on a matter of real-estate business in connection with some property there, and
1019 may have need of some advice or information. If so, and he calls on you, I will be obliged if you will help him in any way you can.

Yours sincerely, H. N. TWOMBLY."

Q. Did you write to Mr. Twombly?

A. I presume I did; I don't remember.

Q. You do not remember whether you wrote to Mr. Twombly or not?

A. I do not remember whether I wrote to him that night or not.

Q. When do you remember that you wrote to him after receiving that letter?

A. I wrote to Mr. Twombly within a day or so after receiving that letter.

Q. Did you take a copy of the letter that you wrote to Mr. Twombly?

A. I cannot say as to that.

Q. Will you deny that you took a copy of the letter that you wrote to Mr Twombly?

A. I will not.

Q. Have you a copy of the letter that you wrote to Mr. Twombly?

A. I cannot say without looking for it.

Q. Have you not looked for the letter that you wrote to Mr. Twombly?

A. I have not.

Q. Or rather for the copy?

A. I have not.

Q. When did you last see a copy of the letter that you wrote to Mr. Twombly?

A. I do not know that I have ever seen a copy of the letter, because I do not know whether it was copied or not.

Q. Are you not in the habit of copying all letters?

A. I am in the habit of copying my business letters if they are written in business hours, but not all letters of friendship.

Q. Was this a letter of friendship?

A. It was very likely to be partly friendship and partly business, as I was in constant correspondence with Mr. Twombly.

Q. Do you know what you said in that letter?

A. I do not.

Q. Do you recollect how many pages that letter was?

A. I do not.

Q. Do you recollect it covered eight pages?

A. I do not.

Q. Do you not recollect that it was a long letter to Mr. Twombly,

detailing and describing to him all that had taken place in reference to this property?

A. I do not. I was very likely to write such a letter, but I do not remember it.

Q. Is there anything the matter with your memory?

A. You can judge for yourself.

Q. Is there any letter that you wrote to Mr. Twombly about this matter that you do remember about?

A. Yes.

Q. When was that written—the letter that you remember?

A. That was written some time in the middle of April.

Q. Have you a copy of that?

A. I have not.

Q. Have you a copy of that?

A. I think not.

Q. Did you make a copy of it at the time or have one made?

A. I presume not, as I was not in the city at the time I wrote the letter.

1020 Q. Where were you?

— At Bethlehem, Pennsylvania.

Q. When did you write it?

A. Some time after the 13th of April.

Q. How long after the 13th of April?

A. I could not say as to that, but several days after, I should judge.

Q. Do you know what you said in that letter?

A. I do; generally.

Q. Will you please state what you said in that letter?

A. I decline to answer that, as it was largely a private letter and very few words about this matter, as I remember the letter.

Q. What was the claim which Mr. Twombly had against Stephen A. Dutton; what was the amount of the money that was owing by Stephen A. Dutton to Mr. Twombly?

A. I have understood that Mr. Twombly had a note for which Mr. Dutton was responsible for $10,000.

Q. From whom did you learn that?

A. I think I heard it from several persons. I do not know who I heard it from first.

Q. Will you not mention the person from whom you heard it?

A. I heard it from Mr. Twombly and from Mr. Czaki.

Q. Any one else?

A. I cannot say as to that.

Q. Try to think.

A. I have not any better memory of that for thinking.

Q. You do not remember anything else except Mr. Twombly and Mr. Czaki?

A. I may have heard it from others, but I do not remember now.

Q. From whom did you hear it first, Mr. Czaki or Mr. Twombly?

A. I presume I heard it first from Mr. Twombly, but I cannot say positively.

Q. When was it you heard it from Mr. Twombly?

A. I cannot say that.

Q. Do you not recollect that it was in connection with the debt of $10,000 which Stephen A. Dutton owed Mr. Twombly that you wrote to Twombly?

A. I was Mr. Twombly's attorney in certain matters, and all matters concerning this business I must decline to answer on the confidence of an attorney.

Q. Were you Mr. Twombly's attorney to collect from Stephen A. Dutton the debt that Mr. Dutton owed him of $10,000?

A. That is a part of my confidential business.

Q. Were you or were you not retained by Mr. Twombly to collect from Stephen A. Dutton this debt of $10,000?

A. General Mussey, my husband and predecessor in business, and myself had at various times represented Mr. Twombly in business matters, and in this matter I was interested for Mr. Twombly, as was known to my other client, Mr. Dutton.

Q. You say that Mr. Dutton knew that you represented Mr. Twombly in regard to this claim of Mr. Twombly's against Mr. Dutton for $10,000. Is that so?

A. I did not say so.

Q. What was it, then, that you said Mr. Dutton knew?

A. If the examiner will read over the answer you will see what I said.

1021 Q. I prefer to have you state. Have you any objection to doing so?

A. I have.

Q. What is your objection?

A. My objection is that I have answered that question once.

At the request of solicitor for the complainant, the examiner read the following answer:

"General Mussey, my husband and predecessor in business, and myself had at various times represented Mr. Twombly in business matters, and in this matter I was interested for Mr. Twombly, as was known to my other client, Mr. Dutton."

Q. You have heard the answer that you made re-read. To what do you refer in that answer "in this matter"?

A. I was interested in the matter that concerned Mr. Twombly.

Q. But what particular matter do you speak of there?

A. The $10,000 note.

Q. How do you know that Mr. Dutton knew what you say he knew in regard to the fact of your representing Mr. Twombly in that matter?

A. I know it under the confidence of attorney and client.

Q. Was not Mr. Twombly interested to have you collect that debt for him from Dutton?

A. That is a matter between Mr. Twombly and myself.

Q. Why do you refuse to answer that question?

A. Because it is a matter between Mr. Twombly and myself, and you have no more right to ask that than you have to ask about any other business that I have for clients.

Q. Were you Mr. Twombly's attorney in that matter?

A. I have answered that question before.

Q. I want to know whether you decline to answer the question on the ground that there existed between you and Mr. Twombly the relation in regard to that $10,000 claim of attorney and client.

A. I have stated already that both General Mussey and myself generally looked out for any interests of Mr. Twombly where it was in our power.

Q. Do you decline to answer that question on the ground that you were Mr. Twombly's attorney in regard to that matter?

A. I decline to answer that question on the ground that I was looking out always for Mr. Twombly's interests, so far as they did not conflict with any one else's interests, and in that particular I was undoubtedly Mr. Twombly's attorney, as well as confidential friend.

Q. When did Mr. Twombly retain you to collect that $10,000 from Mr. Dutton?

A. I have already stated that General Mussey and myself generally looked out for Mr. Twombly's business. We never had special retainers for special business.

Q. Did not Frederick M. Czaki tell you when he saw you in Washington on the occasion to which you refer, on or about the 10th day of April, 1896, that he represented Mr. Twombly's claim of $10,000?

A. He did not.

Q. What conversation did you have with him in regard to
1022 the claim of Mr. Twombly for $10,000?

A. None that I remember at that time.

Q. At any time?

A. Afterwards Mr. Czaki said to me that he held a power of attorney from Mr. Twombly to represent him in that matter, but I never saw it and knew nothing of it until some time afterwards, and never knew anything of it except his statement in the matter.

Q. Representing Mr. Twombly at that time, when Mr. Dutton saw you first in regard to this $10,000 claim, what, if anything, did you do in the interests of Mr. Twombly?

A. That is entirely between Mr. Twombly and myself.

Q. Did you have any conversation with Stephen A. Dutton as to the payment by him of that $10,000 or any part thereof?

A. Very possibly.

Q. What did you say to him, and what did he say to you?

A. I should not be willing to state it if I remembered it.

Q. Have you forgotten it?

A. I have.

Q. Have you an unreliable memory?

A. Sometimes.

Q. Will you state exactly what Frederick M. Czaki said to you on the occasion when you first met him on April 10th, 1896?

A. I could not state exactly, except being introduced to me. He said generally that he represented a judgment creditor of Dutton's

for $5,400 or thereabouts, and that it would go hard with Mr. Dutton if he did not raise that money and pay it immediately.

Q. The defendants Warner and Wine in their answer have stated under oath that on or about the 10th day of April, 1896, Mrs. Ellen Spencer Mussey, a member of the bar of this District, stated to the defendant Warner, at his office, No. 916 F street northwest, that she had for sale the said lots in square 134, and was referred by said Warner to the defendant Wine, the said Warner being then engaged; whereupon the said Mussey said to the said defendant, Wine, that she was acting as attorney for one Stephen A. Dutton, of New York, who had several judgments against him in that city. Will you kindly state exactly what you said to the defendant Wine in regard to the several judgments that Dutton had against him in New York?

A. I do not remember that I made any statement in regard to those judgments. I stated that my client was obliged to raise money immediately. I do not remember whether I made any statement about the judgments at that time or not.

Q. When did you first hear about these judgments; how long before you spoke to Mr. Wine, was it?

A. I think Mr. Czaki was the first to tell me of those judgments.

Q. Will you please state what he told you?

A. He told me he represented a judgment creditor for $5,400.

Q. Please go on.

A. And that Mr. Dutton must pay it.

Q. What did he tell you about the other judgments that he represented?

A. I think he referred to some other judgments, but I knew nothing of them except a general reference.

Q. Will you please state to what other judgments he referred?

A. I do not know.

1023 Q. Have you a very bad memory?

A. I will allow you to judge of that.

Q. Do you remember Mr. Czaki telling you of his representing the Miller judgments?

A. I do not.

Q. Go on and state all that Mr. Czaki told you about Stephen A. Dutton.

A. When do you refer to?

Q. Everything he said to you on the subject of Stephen A. Dutton.

A. On what occasion?

Q. When he first met you?

A. I do not remember anything that he stated to me in regard to Mr. Dutton more than the particular facts I have already stated. The conversation was in the presence of Mr. Dutton, and the matter of interest to me was what I have already stated. The other matters were immaterial, and have passed out of my mind.

Q. Did he tell you of the nature of the proceedings against Dutton in New York?

A. Not at that time.

Q. Can you not remember anything at all that Mr. Czaki said to you except that there were judgments against Dutton in New York?

A. That is the general subject that I remember. I do not remember anything with any definiteness, except that.

Q. Do you know how many days Mr. Czaki was in Washington when he came here on the 10th of April?

A. I first saw him on the tenth of April, and I last saw him on the 13th of April, and I saw him, I think, on Saturday. Those were the only times I saw him.

Q. Saturday was the 11th day of April, was it not?

A. Yes, sir.

Q. Where did you see him on Saturday, the 11th of April?

A. At my office.

Q. Did you have a conversation?

A. I did.

Q. Will you please state all that was said?

A. It was in the presence of Mr. Dutton, and I informed Mr. Czaki that I hoped that Mr. Dutton would have some money for him by Monday; the transaction would probably be closed on that day.

Q. You knew all the time, did you not, that Mr. Czaki thought a "loan" was to be raised on the property?

A. I did.

Q. Did you tell him that he was mistaken?

A. I did not.

Q. Why did you not tell him he was mistaken in thinking a loan was to be raised on it?

A. I should never have told an attorney representing interests antagonistic to mine that I was going to dispose of my client's property.

Q. Why not?

A. I think your own legal knowledge will answer that question for you.

Q. Because you would be afraid that that attorney, representing interests antagonistic to your client, would take steps to prevent you from disposing of the property if he learned it. Is that the reason?

A. I should think it very likely that he might.

Q. And that was your reason, was it, for permitting Mr. Czaki to continue to believe that a loan was being raised on that property?

A. That was one of the reasons.

1024 Q. What did you say to Mr. Czaki upon the subject of the loan?

A. I said to Mr. Czaki that I thought the transaction I had in hand would be completed by Monday and the money be ready for him.

Q. What did Mr. Czaki say to you on the subject of the loan?

A. He expressed his pleasure that the matter would be closed up so soon. He said it must be. He would not wait any longer.

Q. What was the amount of the loan that Mr. Czaki thought was to be obtained?

A. I really do not know as to that.

Q. Have you forgotten that?

A. I have.

Q. Do you think your duty to your client justified you in concealing from Mr. Czaki, whom you knew represented New York judgment creditors, the fact that no loan was to be obtained upon that property at all, but that it was to be sold?

A. I had no duty to Mr. Czaki's clients, so far as I know.

Q. And you thought it was your duty to your client to conceal from Mr. Czaki that your client was disposing of his property?

A. I have stated my reasons already for not stating anything more to Mr. Czaki than I did as to the transaction.

Q. And you thought that you did not owe it as a duty to Mr. Czaki or his clients to relieve his mind of the false impression that you knew existed in his mind, namely, that Dutton was raising a loan upon that property. Is that so?

A. I acted in that transaction entirely according to my ideas of professional propriety.

Q. And those were your ideas of professional propriety, were they?

A. They were.

Q. What were you afraid that Czaki would do against your client Dutton if he found out that Mr. Dutton was trying to dispose of this property instead of obtaining a loan on it?

A. I was not afraid at all. I simply forestalled any probability of his doing anything.

Q. By concealing the truth; is that so?

A. If you are answering that question you can put that in.

Q. How was it you found out that Mr. Czaki thought that Mr. Dutton was obtaining a loan upon this property?

A. It was evident from his general conversation.

Q. What was it that he said or did that made it evident to you that he believed that Mr. Dutton was trying to obtain a loan upon this property?

A. It was not any one particular thing he said or did. It was the general conversation.

Q. Had with you?

A. With me in the presence of Mr. Dutton.

Q. Will you tell us what in particular it was that Mr. Czaki did or said that you can recollect?

A. He generally spoke of it as though it was a loan.

Q. And whenever he spoke of it as a loan you did not correct him and tell him that it was not a loan, but a sale, did you?

A. I did not. It was not any of my business.

Q. And your reason for allowing Mr. Czaki to be deceived was in order that he might not take steps to prevent you from selling the property; is that right?

1025 A. I was there to look after my client's interest, and was not there to look after his client's. I was not assisting him in any way.

Q. Do you consider that a lawyer is justified in aiding a client to dispose of property to defraud his creditors——

A. Are you asking my opinion as an expert?

Q. When you went to Mr. Warner the first time did you not say to him, "I have given you so much trouble about different things that have not proved of any value. Now I have a bargain for you"?

A. I may have said so. I don't remember it.

Q. What else did you say to Mr. Warner on that occasion?

A. When I went into the office that morning I think I saw Mr. Warner for a moment, but I do not remember. I think Mr. Warner was in the office and turned me over to his partner, Mr. Wine, whom I knew very slightly, if at all.

Q. Did you mention to any one that a lawyer representing the New York judgment creditors of Stephen A. Dutton was in Washington?

A. At what time?

Q. On or prior to the 13th of April, 1896.

A. I really could not say.

Q. Why not? Can you not recollect?

A. I cannot.

Q. Is your memory reliable?

A. I will still allow you to judge of that.

Q. Do you recollect whether you mentioned to any one that a person representing Mr. Dutton's judgment creditors was in Washington expecting to obtain from Mr. Dutton the proceeds of a loan upon this property which he thought that Mr. Dutton was raising through you?

A. I do not remember making any such statement.

Q. Will you swear you did not?

A. I will not.

Q. Did it occur to you at the time that you were aiding Mr. Dutton to defraud his creditors under the very nose of his attorney?

A. It did not.

Q. Did Mr. Wine mention to you on or before the 13th of April, 1896, that he had consulted Mr. John B. Wight about the value of that property, and that Mr. Wight had informed him that he also had that property for sale and knew all about it, and that he considered it worth $50,000?

A. I do not remember any such conversation.

Q. You say that on the first occasion of seeing Stephen A. Dutton that he handed you the deeds of this property, and that that evening you examined them with a view of giving your opinion as to whether they were correct in form. Am I right in my understanding of what you have testified?

A. You are.

Q. And that was on the first occasion that you saw Mr. Dutton?

A. It was.

Q. And that was on the thirty-first day of March?

A. It was the very last of March. I do not remember whether it was the 30th or the 31st.

Q. You did examine those deeds, did you not?

A. I did.

Q. And saw by those deeds, did you not, the property to which they referred?

A. I did.

1026 & 1027 Q. And you saw that that property only included lots 1, 2, 3, and 66, square 134, did you not?

A. They were deeds to that.

Q. And with that knowledge you called upon John Joy Edson, did you not?

A. I did.

Q. Did not Mr. Edson tell you that that property was worth at least $40,000?

A. Mr. Edson said that that property at forced sale would probably not sell over $4 a foot; that it was probably worth more than that, but it would not sell for more than that. I stated to Mr. Edson at the time that I had had deeds submitted to a part of the property, but that I had to receive the deeds to the rest of the property.

Q. Will you please answer my question?

Question repeated.

A. Mr. Edson did not state to me the amount in round numbers. We talked of it by the foot.

Q. Your memory is better than it was a few moments ago, is it not?

A. You may judge of that.

Q. If Mr. Edson stated on the witness stand that he had told you that that property was worth $40,000, would you deny that he told the truth?

A. As I understand, I am being examined as to what I know. I know nothing about Mr. Edson's testimony.

Q. Do you not recollect that you applied to Mr. Edson for a loan upon that property?

A. I did.

Q. And do you not recollect that he told you that he thought the property would bear a loan of $25,000?

A. Including the north lot, occupied by the Kidder house.

Q. Did you ever mention before the present time to anybody that you thought the north lot, including the Kidder house, was included in the property that Stephen A. Dutton had obtained by the Godfrey deed?

A. I did to Mr. Edson and also to the gentleman I met at Fisher & Company's.

Q. And yet you admit that on the very first occasion of ever having had your attention called by Dutton to the property that you were given possession of the deeds themselves, and examined them as a lawyer, and learned from them that that referred only to lots 1, 2, 3, and 66, square 134.

A. The deeds I examined were not all submitted to me at the same time, and I was promised deeds that I did not receive for examination.

Q. No deed was ever promised you, was it, of the Kidder property?

A. I certainly should not have offered to Mr. Edson property to raise money on if I had not expected to have the deeds put in my hands covering that property.

Q. Did you read Mr. Edson's testimony in this case?

A. I have never seen it.

(On account of Mrs. Mussey's business engagements, her further cross-examination was suspended until tomorrow morning at 10 o'clock.)

ROB'T L. MILLER, *Examiner.*

* * * * * * *

1028 After recess.

2 O'CLOCK P. M.

ROBERT I. FLEMING, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. MATTINGLY:

Q. You reside in this District?

A. I do.

Q. Please state what your position is.

A. Architect and builder; more especially, for the last twelve years, in the architectural branch.

Q. State whether for a number of years past you have had experience in the handling of real estate and have become familiar generally with values of real estate in this city.

A. I have for thirty-one years.

Q. Has your attention been called to this property at the northwest corner of New Hampshire avenue and Q street, lots 1, 2, 3, and 66, square 134?

A. It has.

Q. State, in your opinion, what that property was worth in April, 1896.

Mr. KEANE: Objected to on the ground that no proper foundation has been laid to qualify the witness to give testimony as an expert as to real-estate values.

A. I do not think it was worth any more then than it is today. I should put the lot on New Hampshire avenue, fronting 46 feet 6 inches, I believe, this lot 66, at $5 a foot, and the other two lots on Q at $3.50, or about an average of $4 a foot for the whole.

Cross-examination.

By Mr. KEANE:

Q. Have you any relation by the name of Woodville Fleming?

A. No, sir; I know the gentleman you refer to.

Q. You do know him?

A. Yes, sir; I know him when here—W. Woodville Fleming. I believe now he is in New York. We are not related at all in any way whatever.

Q. Are you well acquainted with him?

A. No, sir; only slightly.

Q. Have you ever been engaged in the real-estate business in Washington?

A. I frequently buy and sell real estate and make loans—part of my business.

Q. Have you ever been engaged in Washington in the real-estate business?

A. Not strictly in the real-estate business; no.

Q. Your business or profession is not that of real-estate broker?

A. No. Strictly speaking, it is embraced within the architectural business, but I have many calls to purchase lots and construct buildings and buy and sell.

Q. What is your profession?

A. Architect.

Q. Architect?

A. Yes, sir.

1029 Q. How long have you been an architect?

A. I have practiced in this city for thirty-one years.

Q. Do you know the defendant B. H. Warner?

A. I do.

Q. Have you done any business for him?

A. Never.

Q. Do you know the defendant Louis D. Wine?

A. Not personally acquainted with him at all, but I know of him.

Q. By whom were you served with a subpœna to come here and testify?

A. Mr. Warner.

Q. Were you served with a subpœna?

A. No, sir, but I was notified to come here.

Q. Did you understand my question when I asked if you were served with a subpœna?

A. It makes no difference, subpœna or not; I would come just as readily by request as I would with a subpœna.

Q. What is the last property you bought or sold in Washington?

A. About three years ago.

Q. What property was it?

A. Property on Fourth bet. D & E Sts.; three buildings on Fourth street, very near the city hall.

Q. You form your idea of the value of the lots on New Hampshire avenue and Q street from what the three buildings on Fourth street sold for?

A. Not at all; I have no reference to it at all.

Q. It has no bearing on the subject?

A. None whatever.

Q. What was the occasion previous to that that you bought or sold real estate?

A. I have bought and sold a great deal of real estate in the northwest section within probably a couple of squares of this corner. In other words, I have been pretty nearly the pioneer of Massachusetts avenue and Connecticut avenue.

Q. Kindly answer my question and tell me what was the occasion previous to the time that you bought the three buildings on Fourth street that you purchased or sold any property in Washington.

A. I say property on G street.

Q. Can you answer my question? If you can, please do so.

A. I am trying to.

Q. What was the occasion previous to the occasion that you mentioned as the last occasion when you bought or sold property in Washington?

A. You mean the year?

Q. You have stated that the last occasion when you bought or sold property was three years ago.

A. Exactly.

Q. On Fourth street?

A. Exactly.

Q. Three buildings?

A. Yes, sir.

Q. And I asked you what was the occasion next preceding that when you bought or sold real estate?

A. Just about a year previous to that.

Q. About a year previous to that?

A. Yes, sir.

Q. And where was it?

A. On G street.

Q. Whereabouts on G street?

A. The Fleming building, 1419 G street northwest.

Q. That was in what year?

A. About four years ago.

Q. Did you buy or sell that?

A. Sold it.

1030 Q. To some person whom you represented?

A. I did not represent anybody at all.

Q. It was your own building?

A. It was my own building.

Q. And you sold it?

A. And I sold it.

Q. Did you form your opinion what the value of the northwest corner of New Hampshire avenue and Q street was in April, 1896, upon the basis of what you sold the property on G street for?

A. Not at all.

Q. That had nothing to do with it?

A. Nothing whatever.

Q. Can you tell what property you bought or sold prior to this G Street property that you sold four years ago?

A. I could not name each piece of property without going to my books and referring to it.

Q. When were you asked to come here and testify?

A. Three or four days ago.
Q. Whereabouts were you?
A. At my office.
Q. Where is your office?
A. No. 1018 Twelfth street northwest.
Q. Prior to coming here did you go up and examine that property?
A. I did, although I was familiar with it before; all along or pretty nearly all along there. I previously examined this property some years ago with a view to purchasing it for myself.
Q. How long ago was that?
A. About five years ago.
Q. About 1894?
A. I do not know the year, but about five years ago.
Q. Did you make any inquiry at that time as to what the property was for sale for?
A. I examined the property on the plat, and I did not like the size of the property. There is a narrow alley in the rear for stable purposes, and I did not examine any further into it. I did not make any further inquiry into it. I wanted property for a large residence and a good stable, and I found it was not well adapted for it, and I declined to treat for it.
Q. You wanted it for a large residence?
A. Yes, sir.
Q. For whose residence?
A. For myself.
Q. You did not inquire the price of it, did you?
A. No, sir; I did not.
Q. Did you look at the four lots at that time?
A. Yes, sir.
Q. Considered all four lots?
A. Yes, sir; my attention was called to it by Mrs. Van Wyck, who lives right opposite.
Q. And on account of there being no place for a stable, you thought it would not suit you?
A. Yes, sir; as I would have to lose a great deal of ground in the rear in order to get carriage room. The stable would be too close to the house.
Q. You wanted your stable immediately adjacent to your house?
A. No; I wanted it in the rear of the lot.
Q. Was there any other objection that you saw?
A. Nothing, except the irregular shape of the lot and the narrow alley in the rear.
Q. Would you object to it because the frontage was so large?
A. No.
1031 Q. 112 feet; is that not an advantage to have a large frontage?
A. That is an irregular front on an angle.
Q. Is it not what they call an economical front?
A. A portion of it is economical. The two lots I would not con-

sider economical. There is an alley on one of the lots in the rear which you cannot utilize because it is too narrow.

Q. Is it not a shape that makes it almost entirely available for building a single residence on?

A. Exactly.

Q. And is it not a beautiful neighborhood there?

A. A splendid neighborhood.

Q. Is it not one of the choicest neighborhoods in Washington?

A. We have a good many such neighborhoods. It is one among the many which we have.

Q. And when you were looking at it, were the other four corners built on at that time?

A. Yes, sir; Captain Clover on one corner, Mr. Schneider had a house on the other, Chaplain Van Wyck on the other corner, and the Whittemore house was then building.

Q. The Whittemore house was not yet completed?

A. I think not.

Q. Did you consider any other property up in that neighborhood at that time?

A. I did.

Q. What other property did you consider?

A. The triangle just above there, Eighteenth and Connecticut avenue, the Hooe property.

Q. You do not mean Connecticut avenue, surely?

A. Pardon me; I mean New Hampshire avenue.

Q. Did you object to that, too?

A. No; unless it was because they wanted a higher price for the property than I wanted to pay for it.

Q. Did you ascertain what you could buy the Hooe property for; did you make any inquiry about that?

A. I was present at the sale that took place.

Q. The foreclosure?

A. I was present when it was sold.

Q. The time it was sold under foreclosure?

A. I don't know whether it was foreclosure or not, but the time the property — sold.

Q. If you were present——

A. I was present when it was sold and bought in by Mr. Hooe.

Q. And you know what he paid for it?

A. A little less than $5 a foot.

Q. Don't you know it was over $5.50 a foot that he paid?

A. I do not. My recollection is it was about $5—in other words, it was about $12 less than $60,000, and that would make it about $5 a foot.

Q. One of the defendants' witnesses testified he attended there, and was willing to purchase it at $5.50 a foot; that it sold for much more than that, and he thought for over $6. Would you say he was in error about that?

A. My recollection is it sold for $12 less than $60,000.

Q. Is your recollection so distinct——

A. My recollection is $5 a foot.

1032 Q. Is your recollection so distinct or clear and positive that you would be willing to state as a matter of memory that if another witness here has testified that he wanted to buy it for $5.50 a foot, and attended for that purpose, but that it sold for a much larger sum than that, he was mistaken?

A. The other witnesses who testified have no influence on me in the world. My recollection is it sold for $5 a foot.

Q. I want to find out whether your recollection is so positive that you are willing to say the other witness was mistaken or not?

A. I cannot make it any stronger than I have stated.

Q. Would you be willing to swear that it did not sell for $5.50 a foot?

A. I have already taken an oath on the stand, and that is to the best of my recollection what it sold for—$5 a foot.

Q. Do you remember when that foreclosure sale took place?

A. I do not. I made no memorandum or record of it at all. It is within the last five years.

Q. Was it before April, 1896, or subsequently?

A. My recollection is it was before 1896.

Q. How long before?

A. I cannot say. It is within the last five years.

Q. Are you acquainted with the sales of property that took place in that neighborhood about April, 1896?

A. There were some sales made along there at $5 and $6 a foot.

Q. Please answer my question.

Question repeated.

A. I am not acquainted with the sales. I am acquainted with the property.

Q. And you really think, do you, that your opinion of what that property at the northwest corner of New Hampshire avenue and Q street was worth in April, 1896, is worth anything without your being acquainted with the sales of property that took place at and about that time in that locality?

A. I have been over that territory a good deal every year. I notice when sales are made. I do not make a record of those things, of each piece of property. I keep up a pretty good run. I have bought and sold a great deal of property in that section, and my ideas are based upon the intrinsic value of the pieces of property in accordance with the market rates; what it is adapted for.

Q. Did you not just say you were not acquainted with the sales in that locality in or about the time in question, namely, April, 1896?

A. I did not charge myself especially with the year that the sale was made in.

Q. Did you not just state what I have mentioned? Did you not just so testify?

A. I said I was acqu-inted with the property, but not with the sales. I mean as the property is advertised for sale at auction or private sale; simply that.

Q. Are you or are you not acquainted with the sales of property

in the locality of New Hampshire avenue and Q street in the year 1896?

A. No; I think not. If there were any sales there I do not recall them.

1033 Q. You are not acquainted with the sales in that locality at that time?

A. No, sir.

Q. Are you acquainted with the sales in that locality in 1895?

A. Property adjoining sold since them between Mr. Leiter's and Mr. Whittemore's.

Q. Now kindly answer my question.

A. I cannot say whether I am or not.

Q. You do not know whether you are or whether you are not acquainted with the sale of property in that locality in 1895?

A. I do not remember any one in particular in the year 1895 or 1896.

Q. So that you are giving your opinion as an expert upon the value of the northwest corner of New Hampshire avenue and Q street while admitting that you are not acquainted with the sales that took place in that locality in 1895 or 1896? Is that right?

A. In the first place, I do not claim to be an expert, although I have purchased property, as much property, and sold in that section of the city as any one, and I base my knowledge of the value of that particular property upon the market value of the property in that section. I have bought property and sold property there, but not on that particular corner, not within a block of that particular corner.

Q. You say you do not claim to be an expert?

A. No, sir; although I have bought and sold a great deal of property.

Q. Are you unaware that you have been produced here to give testimony as a real-estate expert?

A. No, sir; I am not. I do not so understand it at all.

Q. When Mr. Warner invited you to come here he did not tell you that he wanted you as a real-estate expert?

A. No. He simply said I was to give him my judgment of the value of that piece of property.

Q. What is the last sale of property in that locality of which you know?

A. The sale between Mr. Leiter's and Mr. Whittemore's.

Q. When did that sale take place?

A. I think within a year.

Q. Is that as near as you can come to it?

A. Within a year is my recollection; within a year or a year and a half. It has not been certainly over a year and a half.

Q. That is as near as you can come to it, is it?

A. Yes, sir.

Q. Do you know who bought it?

A. I do not. I did know the name at the time, but I did not make any record of it.

Q. Do you know who sold it?

A. No, sir; I do not.
Q. Do you know who the broker was?
A. I do not.
Q. Do you know what the area was?
A. I may have known at the time, but I did not charge my memory with it. It can be easily ascertained from the plat.
Q. Do you know what the frontage was?
A. No, sir; I do not.
Q. Do you know what the depth was?
A. No, sir; I do not know the size of the lot. I know the lot was sold, but I made no notice of the sale.

Q. Then, not having a knowledge of any of those things, you are unable, are you not, to gauge the value of the northwest corner of New Hampshire avenue and Q street upon that sale? 1034–1040

A. The size of the lot between Leiter and Whittemore's would not have any influence upon me in fixing the value on the corner of Q and New Hampshire avenue at all, the price per foot for what the land sold for.
Q. Who told you it was sold?
A. I read it in the daily press, and saw it in the record.
Q. Where did you read it?
A. The daily press, the daily papers, newspapers, and in the record.
Q. What other property up there do you know of the sale of?
A. None within that year of 1895 and 1896.
Q. You think your knowledge of the value of real estate up in that locality is sufficient to enable you to testify as an expert in regard to what property is worth there?
A. I think my judgment, based upon that property, is as good as any expert's would be. I doubt if the property would sell for that today, unless some one wanted a desirable lot to build on.
Q. And you do not think your opinion of the value of property in that locality at that time would be worth any more if you were acquainted with the sales that took place up there?
A. I would not let that have any influence on me at all in my judgment.

ROB'T I. FLEMING.

Subscribed to and sworn before me this 2nd day of June, A. D. 1898.

ROB'T L. MILLER,
Examiner in Chancery.

* * * * * * *

1041 ELLEN S. MUSSEY then resumed the stand for further cross-examination.

By Mr. KEANE:

Q. What deed did Dutton give you when he called the first time to see you with a letter of introduction and in Mr. Stirling's company?

A. I do not know how many deeds he gave me that afternoon.

Q. You are unable to remember that?

A. I am.

Q. Yet you carefully examined those deeds, did you not?

A. I did.

Q. Did you see any reference in those deeds to the Kidder property?

A. I did not.

Q. Did you not see that those deeds referred only — lots 1, 2, 3, and 66, square 134?

A. I do not know whether they referred to that only or whether was included in them the deed to the property on Connecticut avenue.

Q. You do remember, do you not, that the Godfrey deed which Dutton submitted to you included a house and lot on Connecticut avenue?

A. It did.

Q. And do you not remember that no other property was included in any of those deeds?

A. Those were the only deeds I received from Dutton.

Q. Did you ever do anything for Dutton in connection with the Connecticut Avenue property?

A. I prepared the deed which was afterwards executed by Mrs. or Miss Godfrey; I do not remember which.

Q. But you did nothing, did you, for Dutton in regard to that property towards selling the same or obtaining a loan upon it?

A. I attempted to obtain a loan upon it.

Q. Was that before or after the 13th day of April, 1896?

A. Before.

Q. You did not attempt to obtain a loan on it, did you, from Mr. *Tom* Joy Edson?

A. I really do not remember that I did. If I did I do not remember it now.

Q. Did Dutton ever tell you that he had obtained the Kidder property?

A. My conversations with Dutton were as an attorney and client.

Q. Do you not know that at the trial of Stephen A. Dutton, which preceded his conviction for swindling this complainant out of
1042 this property, that he stated on the witness stand that you were not his attorney, and that he waived then and forever any privilege of attorney between you and him?

A. The first information I had as to what Dutton testified on the witness stand in that trial came from Miss Godfrey the first time she visited me in my office, when she asked me if I knew what Dutton

had testified in regard to me, and I told her I did not. She informed me that he testified that I had been his attorney for years, and assisted him in certain Blodgett claims of his in this city. The second time that Miss Godfrey visited me in my office she asked me again if I knew what Mr. Dutton testified as to me in that trial, and I told her I did not, and she said he testified that I was never his attorney, but only his agent or broker.

Q. Did you understand that my question inquired of you as to any conversation between you and Miss Godfrey?

A. I am stating my sources of information as to that trial. I was not present at any part of it.

Q. Do you not know that it is your duty as a witness simply to make responsive answers to questions that are asked you?

A. Are you asking me as an expert?

Q. Will you kindly confine your answers responsively to my questions and not attempt to spread upon the record here anything concerning which you are not interrogated?

A. If your cross-examination is so conducted as to bring out things that you do not want to know, that is the fault of counsel for the complainant.

Q. I ask you will you kindly confine your answers to my questions in the future?

Mr. MATTINGLY: I submit on behalf of the witness that she has confined her answers to questions put to her, and in respect of the question now at issue her answer was responsive in simply giving the source of information as to what Dutton had stated at his trial in New York.

Mr. KEANE: I submit that the answer was entirely irregular, and I now ask the examiner to repeat my question to the witness.

Question repeated.

Mr. KEANE: Can you answer that yes or no?

A. I have just stated that I was not present at that trial.

Q. I ask you whether you do or do not know it.

A. I do not know it of my own knowledge.

Q. Why did you object to stating that at first?

A. You did not ask me in that way whether I knew it of my own knowledge.

Q. Was not my last question to you exactly the same as my first question?

A. I really do not know.

Q. So you are unwilling to say whether Mr. Dutton ever told you or not that he had obtained any deed to the Kidder property, on the ground that you had relations with him as attorney and client; is that so?

A. Yes.

Q. Do you not recollect on the first occasion when Dutton
1043 called on you in reference to the deed of the property which he put in your hands that Mr. Stirling was present, and that you opened the plat book and looked at the property?

A. Yes.

Q. Was not the property you looked at lots 1, 2, 3, and 66, square 134, and lot 40, square 92?

A. The lots we looked at included in that square 134 the lots directly north of those four lots. I do not remember whether we looked at that time at the other lots at all or not.

Q. Do you really mean that Dutton was also claiming to own lots 64 and 65, square 134, on which the Kidder house stands?

A. I do.

Q. Did he say he had obtained that property from the Godfreys also?

A. I so understood him.

Q. Did you ever find out what his object was in misleading you in that way?

A. All those matters are between Mr. Dutton and myself.

Q. When did you find out that he told you what was false about his owning the Kidder property?

A. I first learned the improbability of it when I went to the office of Fisher & Company. I afterwards conducted an investigation and found out they had made a correct statement.

Q. Did Dutton explain to you why he did not give you the deed of the Kidder property?

A. As I have stated, all those matters are between Mr. Dutton and myself.

Q. Did you ever find out from any other source than Dutton why he did not give you the deeds of the Kidder property?

A. I found out; yes.

Q. What did you find out?

A. I found out that Miss Godfrey had not owned that property.

Q. If it is not a confidential secret, will you kindly state why it was that Mr. Dutton should have told you that he had obtained title also to lots 64 and 65, namely, the Kidder property, when such was not the truth?

A. I only have my own supposition about that.

Q. How long did it take you to discover that he had told you an untruth about his having obtained deeds to the Kidder property?

A. I really could not tell you.

Q. Was it the same day?

A. I really do not know.

Q. Was it the next day?

A. I really do not know.

Q. Was it the day after that?

A. I really do not know.

Q. Is there anything the matter with your memory?

A. I will allow you to judge of that.

Q. Will you not kindly do your best to state how long it took you to find out that Dutton had told you an untruth about the Kidder property?

A. I have already done so.

Q. Your memory fails you entirely on that point?

A. It does.

Q. And you did find out that Dutton had told you an untruth

about owning the Kidder property? Did you also find out whether the untruth was purely wanton or whether he had a reason or motive for deceiving you?

A. I did not find out, but I supposed he had made an honest mistake as to the amount of property he had acquired in the deal with Mrs. and Miss Godfrey.

1044 Q. You really supposed, did you, that Mr. Dutton had made a mistake to the extent of two lots of valuable property on New Hampshire avenue, which he thought he had got the title to, or had not?

A. I did. I found that Mrs. and Miss Godfrey had the reputation of being very bright, shrewd business women, and I thought it very probable that in making a deal this man had made a mistake as to the amount of property involved.

Q. What was the ground on which you thought that Dutton supposed he had obtained seven lots, when in fact he had only obtained five lots? Was there anything in the deeds that he submitted to you that justified him in any such mistake?

A. There was nothing in the deeds.

Q. Did he tell you that he had the deeds of the Kidder property and was going to give them to you later?

A. He told me that that was only a part of the deeds; that he would bring me or send me the other.

Q. Did he tell you that he had the deeds of the Kidder property, and was going to give them to you later?

A. I so understood him.

Q. Your memory is quite clear about that?

A. I so understood him.

Q. Did you ever ask him later for the deeds of the Kidder property?

A. Those are matters between Mr. Dutton and myself.

Q. Did he ever offer afterwards to give you the deeds of the Kidder property?

A. That is a matter between Mr. Dutton and myself.

Q. Did he ever explain to you why he told you the untruth, that he had the deeds of the Kidder property?

A. That is a matter between Mr. Dutton and myself.

Q. When you found out that he had told you an untruth in saying that he had the deeds of the Kidder property, did you express any displeasure to him for having deceived you?

A. That is a matter between Mr. Dutton and myself.

Q. Did you feel at all indignant that a person whom you say was your client should have told you such an untruth as that he had deeds of the Kidder property when in fact he had none?

A. That was a personal matter and feeling.

Q. Do you not know that when you saw John Joy Edson and applied to him for a loan that he referred to his plat book, and that the only lots to which any reference was made on the plat book on which the loan was to be obtained were lots 1, 2, 3, and 66, square 134?

A. I do not know.

Q. And do you not know that it was solely upon those lots that Mr. Edson said that a loan of $25,000 could be obtained?

A. I do not know it.

Q. And do you not know that it was those lots on which he set his appraisal of $40,000?

A. I know it was not those lots alone.

Q. And if Mr. John Joy Edson says to the contrary, would you say that he did not know what he was talking about?

A. I could not say anything about him.

Q. Do you not know that those Kidder lots, with the improvements upon them alone, are worth more than $25,000?

1045 A. I should not be able to make an estimate of that property without looking at it.

Q. Do you recollect the date when you saw John Joy Edson?

A. I think it was the first of April.

Q. Was he the first person to whom you went about the property?

A. I am not sure, but I think he was.

Q. Did you not go to some one the same day that you saw Mr. Dutton for the first time?

A. I really do not remember.

Q. Do you not remember that you told Mr. Dutton to come in again the next morning, and that in the meanwhile that afternoon you would see some parties about the property?

A. Very likely.

Q. Did you see any parties that afternoon?

A. I really do not remember.

Q. When Mr. Edson told you that he thought you could get a loan of $25,000 on the property, why did you then ask him if he would give you $25,000 for it?

A. I do not remember that I asked him such a question.

Q. When Mr. Edson told you that he thought $25,000 would be a very low price, and you said you might sell it to him for that, and would return, but never came back, why did you say you might want to sell the property for $25,000 after you had just been informed by Mr. Edson that you could get a loan of that sum on the property?

A. I do not remember any such conversation.

Q. Has your memory recently got out of order at all?

A. I will allow you to judge of that.

Q. Did it give you very much trouble to keep Mr. Czaki from finding out that it was not a loan but a sale that Mr. Dutton was making of his property?

A. I never made an estimate of how much trouble it was.

Q. Did not Mr. Czaki annoy you with questions as to the particulars of the transaction?

A. I was not particularly annoyed.

Q. Was not Mr. Czaki very inquisitive about everything that was going on, and did he not ply you with numerous questions as to what you were doing for Mr. Dutton?

A. He talked to me about it when he was in my office.

Q. Did it not embarrass you at all, when he talked to you about it, to keep from telling him or letting him find out that it was a sale and not a loan?

—. Mr. Czaki was in my office two or three times, and I talked with him briefly. I had not time to spend very long with him. I had other business.

Q. Was not he very distrustful and suspicious about Dutton, and did he not want to know from you all that he could about what Dutton was doing?

A. He may have wanted to.

Q. Did you find it an easy matter to keep the secret concealed from him that it was a sale and not a loan?

A. Mr. Czaki struck me as a young man of inexperience and did not know how to find out what he wanted to know.

Q. Was he not an unusually wide-awake young Hebrew?

A. I do not know.

1046 Q. Did he not tell you that Dutton had swindled his client, Isaac Hirsch, out of $5,000?

A. Previous to this transaction?

Q. Yes.

A. No; he did not.

Q. Did you not talk together about the way that Dutton had swindled your mutual client, Horatio N. Twombly, out of $10,000?

—. Previous to this transaction?

Q. Please tell me——

A. I ask you what you refer to?

Q. At any time.

A. He never mentioned it previous to this transaction. Mr. Czaki met me in my office in the presence of Mr. Dutton with one exception, and that was when I was going out of my office.

Q. Did you not know that Czaki had come to Washington on that occasion expressly for the purpose of preventing Dutton from playing any tricks upon his creditors?

A. I did not.

Q. What did you understand was the reason that Czaki had come to Washington at that time with Stephen A. Dutton?

A. He stated to me that he came over to get the money that Mr. Dutton hoped to raise upon this property for the benefit of the judgment creditor of $5,000 and over.

Q. If Mr. Czaki had stated in an affidavit as follows, would you say it was true or false, namely: "I went to Washington with Dutton on the night of the ninth of April, 1896, and arrived there the morning of the tenth. He took me to see his lawyer, Ellen S. Mussey, of No. 470 Louisiana avenue, and introduced me to her. I told her I was a lawyer from New York; that I represented his New York creditors."

A. I should not say anything about an affidavit when I was on examination as a witness in a case.

Q. I ask you whether such a statement as that is true or false?

A. Are you asking me as an expert?

Q. I am asking you to state as a matter of memory whether such

a statement as I have read would conform to the fact as you know it to exist, or would be contrary to the fact?

A. I think that affidavit is very nearly exactly with my testimony as to that interview. It seems to be about the same thing.

Q. You think, then, that Mr. Czaki did tell you that he represented Dutton's New York creditors, do you?

A. He told me that he represented this particular creditor, whose name I do not remember, for $5,000 and over, and he very likely mentioned the others. The others did not make any impression on my mind at that time. He may have mentioned them; I would not be willing to say he did not.

Q. Would you say that the statement of the defendants Warner and Wine in their answer was false, where they swear that you told them that you were acting as the attorney for one Stephen A. Dutton, who had several judgments against him in New York?

A. I should not say so.

Q. Do you not recollect that such was the fact, and that you did so state to them?

A. I may have done so.

Q. What makes your memory so weak about these matters?

A. I will allow you to have your own opinion about it.

1047 Q. Do you not recollect that you and Mr. Czaki had several confidential chats about Dutton and his creditors?

A. I do not.

Q. What inquiry did either Mr. Wine or Mr. Warner make as to the reason the judgment debtor had for disposing of his property in such great haste?

A. They inquired what his need was for money.

Q. Did they want to know whether his creditors knew he was disposing of it?

A. I do not remember their asking any such question.

Q. Did they not want to know who his creditors were and what was the amount of his debts?

A. I do not remember any such questions.

Q. Did they not want to know how it was, after giving property worth $65,000 for it, this judgment debtor was willing immediately to dispose of this property again, and to let them have it for only $7,000, and assume only $17,500 mortgages?

A. There was never any assumption by Mr. Warner and Mr. Wine that that property was worth $25,000 over the amount of the encumbrances, and we never talked on any such basis.

Q. Do you not know that Mr. John B. Wight, prior to the 13th day of April, 1896, told Mr. Wine that Dutton had informed him that he had given property worth $65,000 in exchange for this property?

A. I do not remember of ever hearing any such statement.

Q. Did not either Mr. Warner or Mr. Wine want to write to anybody to find out if everything was all right?

A. They may have wanted to.

Q. Did they not express any desire to find out about Dutton's creditors or their knowledge of what he was doing?

A. I do not remember any such questions to me. They asked me about Mr. Dutton and what I knew about him, and I told them that he was introduced to me by an old friend and a good business man in New York city, in whom I had perfect confidence.

Q. Did you not also tell them that Dutton had swindled that man out of $10,000?

A. I did not.

Q. Do you not know that Mr. Wine has admitted that you said that?

A. I know nothing about Mr. Wine's testimony.

Q. If Mr. Wine has so stated, would you say that that statement was true?

A. Is that a supposable case or is that the testimony that you are asking my opinion about?

Q. Can you answer the question?

A. I shall not answer it in that form.

Q. What is your recollection?

A. What is my recollection of what?

Q. As to whether you ever at any time stated to Mr. Wine that Stephen A. Dutton had swindled this man Horatio N. Twombly, who gave Dutton the letter of introduction to you, out of $10,000?

A. I certainly never made any statement of that kind to Mr. Wine previous to the 13th of April, 1896.

Q. What is your recollection of ever having stated such a fact?

A. I may have stated it to him afterwards; I don't know.

1048 Q. Have you any recollection of having done so?

A. I have no recollection at all about it.

Q. Did not the fact that this judgment debtor was disposing of property while there were judgments against him in a foreign State seem at all to excite their suspicions?

A. I do not know what their suspicions were.

Q. Did not either of them tell you that this property was on their books for sale for $65,000?

A. They did not.

Q. Did not Dutton's great haste to dispose of this property before the lawyer, Mr. Czaki, representing his New York creditors, could find out that it was not a loan make Dutton ready and willing to sell the property at a great sacrifice?

A. It may have done so.

Q. Was the tenth of April the first time you called the attention of either Mr. Warner or Mr. Wine to the fact that you represented Dutton and wanted to dispose of the property for him?

A. It was.

Q. Was it in the morning or the afternoon of the tenth of April that you paid your visit to the office of Messrs. Warner and Wine?

A. I think it was some time before lunch.

Q. Was it the same day—namely, the tenth of April—that the option was signed to which you have referred?

A. My recollection is it was the evening of the same day.

Q. About what o'clock?

A. I think that was brought to me about four o'clock or after.

Q. Whereabouts was it signed?
A. In my office.
Q. By whom?
A. By Mr. Dutton.
Q. Who were present?
A. I was present.
Q. Any one else?
A. I do not remember of any one else; there may have been.
Q. By whom was the option drawn?
A. I do not know.
Q. Who gave it to you?
A. Mr. Wine.
Q. Whereabouts?
A. In my office.
Q. How long before Mr. Dutton signed it?
A. I do not know.
Q. Was Mr. Wine present when Mr. Dutton signed it?
A. He was not.
Q. Was any one present besides you and Mr. Dutton?
A. When Mr. Dutton signed it?
Q. Yes.
A. I do not remember that there was.
Q. Was any one present besides you and Mr. Wine when Mr. Wine brought it to you?
A. I think very likely my clerk was there.
Q. Do you remember?
A. I do not.
Q. When did you last see that option?
A. I really do not remember.
Q. Do you know who has possession of it now?
A. I do not.
Q. Will you state the language of the option as nearly as you can remember it?
A. I do not remember anything of it.
Q. Was not a contract of sale signed on the 10th of April?
A. This option or contract of sale or whatever you call it was signed on the 10th of April.
Q. Are they one and the same document?
1049 A. So far as I understand, there was only one document signed; certainly not in my presence but one.
Q. Can you not recollect positively whether there were two separate papers or not, one known as the contract of sale, and the other as an option?
A. I have no remembrance of but one.
Q. Is not an option altogether different from a contract of sale?
A. It may combine both.
Q. Does not an option give a party the freedom to accept or reject within a certain time?
A. Are you asking my opinion as an expert?
Q. I am asking you whether you have knowledge or not of the difference between an option and a contract of sale in order that I

may find out from you by further questions whether you are confusing these two things because you do not know the nature of their difference or because your recollection has failed you.

A. I have stated that I remember only one paper. As to my knowledge of law or real estate or anything of that kind, I am not here to testify.

Q. I simply called for your knowledge of facts.

A. I have stated my knowledge of facts.

Q. Then if there was a separate instrument known as a contract of sale you have no recollection of it?

A. I have not.

Q. Can you recollect whether what you call an option held the defendants Warner and Wine to purchase the property or left them free to decline to do so?

A. I really do not remember.

Q. Do you recollect what the object of the option was?

A. To purchase the property within a certain time at a fixed price.

Q. And that was Friday evening, was it not?

A. That is my remembrance.

Q. And between Friday evening and Monday evening the whole transaction was completed and the deeds executed and delivered. Is not that so?

A. That is so.

Q. And of the two days intervening one was a Sunday and a holiday. Is not that so?

A. I think you know whether Sunday comes between Saturday and Monday.

Q. So that Saturday was the only working day between the time that you called the attention of Mr. Warner and Mr. Wine to the opportunity of making this purchase and their completing the purchase. Is not that so?

A. I called their attention to it on Friday; the transaction was completed on Monday afternoon; there was not any difference in that week from any other week as to the days.

Q. Would it not have been shorter for you to have said yes?

Q. Would it not have been shorter for you to have asked a different question?

Q. Had you anything to do in assisting Mr. Warner or Mr. Wine to obtain a loan on the Farmers' and Mechanics' Bank of Georgetown by which to raise the money, namely, $7,000, to carry this transaction through?

A. I know nothing about any such transaction and certainly never assisted them.

1050–1052 (On account of the business engagements of Mrs. Mussey she was excused from the stand until some further time.)

At this point a recess was taken until 2 o'clock p. m.

ROB'T L. MILLER, *Examiner.*

* * * * * * *

1053 CHARLES G. SLOAN, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. MATTINGLY:

Q. State what your business is.

A. Auctioneer.

Q. How long have you been engaged in that business in
1054 this city?

A. Since 1873 or 1875; somewhere in that neighborhood; 1895, I guess.

Q. Has it been part of your business to make sales of real estate?

A. Yes, sir.

Q. In the prosecution of your business have you become generally acquainted with values of real estate in this city?

A. I think so.

Q. Are you frequently called upon to appraise the value of property?

A. Yes, sir.

Q. Are you familiar with the property at the northwest corner of New Hampshire avenue and Q street, being lots 1, 2, 3, and 66, in square 134?

A. Yes, sir; I know the property.

Q. Please state, in your opinion, what was the value of that property in April, 1896.

A. I do not think it would differ any today, and it is worth about the same now as then.

Q. What is its present value?

A. $4 or $5 a foot.

Cross-examination.

By Mr. KEANE:

Q. Do you mean that is what they would bring at public auction?

A. Yes, sir; I think the ground ought to bring that. I think it is worth that.

Q. At public auction?

A. Yes, sir.

By Mr. MATTINGLY:

Q. What is the difference between public auction or private sale?

A. There is this difference: If somebody wanted this property for a particular purpose he might give more for it; that is all. A man wants any particular ground that is for sale and the man who wanted a higher price for it might be able to get it for this reason, simply because the other party wanted it.

Q. You have stated that the property is worth from $4 to $5 a foot. I intended by my question to ask you as to the fair market value of the property at that time. Was that your opinion as to its market value?

A. Yes, sir; and I still hold to it.

Recross-examination.

By Mr. KEANE:

Q. You are willing to swear that in your opinion you think that that property, lots 1, 2, 3, and 66, square 134, would bring between $4 and $5 a square foot at public auction?

A. Yes, sir.

C. G. SLOAN.

Sworn to and subscribed before me this 3rd day of June, A. D. 1898.

ROB'T L. MILLER, *Examiner.*

1055 THEODORE A. HARDING, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. MATTINGLY:

Q. What is your occupation?

A. Real estate and insurance.

Q. How long have you been engaged in that business?

A. Since 1886.

Q. Are you generally familiar with the values of real estate in this city?

A. Yes, sir.

Q. Now, calling your attention to the property at the northwest corner of New Hampshire avenue and Q street, lots 1, 2, 3, and 66, square 134, what was the value of that property, in your opinion, in April, 1896?

Mr. KEANE: Objected to on the ground that no proper foundation has been laid to qualify this witness as an expert as to the value of real estate in Washington.

A. I will have to qualify my answer in regard to that.

Q. Answer it in your own way.

A. It will depend altogether in regard to whether the property had to be sold or whether a party was very desirous of purchasing a piece of property like that.

Q. What would you say was the fair market value of the property sold as a whole?

A. What time in 1896?

Q. April.

A. That was a presidential year.

Q. Yes.

A. How many square feet are there in the lot?

Q. About 6,300.

A. Let me see the plat a minute. (After figuring on a piece of paper:) I put lots 2 and 3 at $3.50 and lot No. 1 at $5 a foot; that is taking into consideration the times about those times—about two years ago; you are asking for the valuation in the past.

By Mr. WARNER:

Q. You have not put in lot 66; that is to be valued.

The WITNESS: I made a mistake here; I left that out; no, I have not; I have taken 66 and 1 together, and I thought that did not figure out right; take 1 and 66 as one lot; that is the way I took it at $5 and the others at $3.50.

By Mr. MATTINGLY:

Q. Is there any difference, in your opinion, as to the value of the property and what a person would pay for it whether he bought it on speculation to sell again or bought it for a residence?

A. I consider those corners such as are usually held at a fancy price, and in order to get anywheres near the values held by the owners it is very difficult to find a purchaser; I know cases where—take four corners for instances—where one corner would sell for a third or sometimes a half more than the other corners, and the desirability being almost equal, because of getting a purchaser who just wanted that one lot, and it was valuable to them because
1056 they wanted the lot, not because other properties around it were worth the price asked.

Q. Would a person who desires a corner of that kind for the purpose of his own home pay more for it than one who bought it on speculation with a view to reselling it?

A. Certainly. That has been the history of all those corners that have been sold up there.

Q. What, in your opinion, would be the value of that property for the amount which a purchaser would be willing to pay for it who bought it with a view of reselling it?

A. From $3.50 to $4 a foot, with the idea of buying on speculation.

Cross-examination.

By Mr. KEANE:

Q. What kind of a locality is that?

A. A good locality.

Q. Is it what you would call a fashionable locality?

A. Yes, sir; it is in a good part of the city—as good as any residence property.

Q. Are there any very elegant houses in that locality?

A. I do not call them very elegant. There is a good class of buildings in the vicinity, on the opposite side. One very good residence there; Mrs. Clover's.

Q. Whose?

A. Mrs. General Clover.

Q. Are there any others?

A. Yes, sir; there are others there.

Q. Whose are they besides the one you have mentioned?

A. I cannot tell you the names of the parties who occupy the other properties in the vicinity there. The largest residence, I think, with the exception of Mrs. Clover's, in that immediate vicinity, is the

Chinese legation. Of course, further remote is Leiter's residence, and perhaps the most costly residence in Washington.

Q. Are there any others?

A. Mr. Whittemore's residence, right opposite.

Q. Is that a very elegant residence?

A. I do not call them very elegant residences. They are first-class for Washington.

Q. You do not call Mrs. Whittemore's an unusually elegant and beautiful residence?

A. No, sir; I do not; not according to my taste, allowing me to speak for my taste.

Q. You do not consider it what would be called a costly residence, do you?

A. Yes, sir; it is a costly residence; there is no question about that. Sometimes a man pays more in cost than the thing is really worth.

Q. It evidently suits Mr. Whittemore better than it would you.

A. Yes, sir; it suits Mr. Whittemore, I presume. Of course, I cannot answer for him.

Q. Do you regard yourself as a connoisseur in point of taste for residences?

A. I do, from my own standpoint; not for others.

Q. Have you made a study of that?

A. What is your question?

Question repeated.

A. Of what? Elegant residences? What do you mean by your question?

Q. Have you made a study of that? Can you answer that 1057 question?

A. I do not think that question is definite. There are several things you have been talking about in your question back of that. If you mean, do I consider myself a connoisseur, I can answer it. I do not, in that sense of the word, studying it from that point.

Q. There are five corners at that point, are there not?

A. There are four corners at New Hampshire avenue. There are five if you count Eighteenth and Q streets.

Q. And this northwest corner is the only remaining vacant corner, is it not?

A. Yes, sir; if I remember rightly, it is.

Q. And is that not a very short block?

A. You mean the block——

Q. One moment. Is not that a very short block that lies between the northwest corner of New Hampshire avenue and Q street and Dupont circle? Look at the plat, if you like.

A. (After referring to plat.) It is about the usual length of a block, taking New Hampshire from it.

Q. Suppose you look at the plat again.

A. (After referring to plat.) I should say it is fifty feet shorter than the other block. I am speaking of the New Hampshire Avenue frontage.

Q. At one end is the Leiter house, and on the other is the Whittemore house?

A. Yes, sir.

Q. The Whittemore house is directly across the street—south, on Q street—from this northwest corner of New Hampshire avenue and Q, is it not?

A. The side of the house is; it fronts on New Hampshire avenue; yes, sir.

Q. How many feet on Q street is this northwest corner?

A. About sixty-three feet, I think. This other one shows plainer, referring to Wilson Exhibit No. 1; sixty-three feet and a fraction; sixty-three feet and seven-tenths, I think.

Q. How many feet does the Whittemore property abut on Q street?

A. 132 and three-tenths feet.

Q. This northwest corner fronts towards Dupont circle, does it not? Treating the property as a whole, would not a house erected upon it look in the direction of Dupont circle or would it look in an opposite direction?

A. Part of the house would look on Dupont circle and part of it on New Hampshire avenue. It would depend altogether upon the frontage of the house. In fact there would be openings on both streets. It is natural to put all the light you can into a house on each street.

Q. This northwest corner of New Hampshire avenue and Q street has a total frontage of 112 feet?

A. You mean on both streets?

Q. Yes.

A. Yes, sir; it is 112 feet or within a fraction of it.

Q. Is it not what would be called an economical lot, almost entirely available for the purpose of building a handsome residence on it?

A. No, sir; I do not think it is an available lot for putting a residence on the whole of it, because it is irregular.

Q. Will you not kindly look at this chart which has not been drawn to a scale, but look at the plat there. Do you consider that a very choice piece of property?

A. Yes, sir; I consider it a good piece of property.

1058 Q. Would you consider that the beautiful residences on the four corners enhance the value of that land?

A. Of course it does; there is no question about that.

Q. Do you consider that its value is also enhanced by its close proximity to Dupont circle?

A. Yes, sir.

Q. Would it not be considered by real-estate men what is called fancy property?

A. Of course, it is fancy property; a fancy price on it. If you go a square from there you will get ground in just as close proximity at $2.50 or $2.25 a foot.

Q. Just a short distance away?

A. Well, within a little over a square.

Q. Up on P street, I suppose?
A. Yes, sir; on P and Eighteenth. You can get ground——
Q. Up on R street, too?
A. Well, R street is not as desirable as P or Eighteenth street.
Q. Would you not consider that the northwest corner of New Hampshire avenue and R just as good a corner as this corner?
A. If you will tell me which lot you mean—whether you mean three or four lots or one lot.
Q. I want to get at your idea——
A. You are talking here about three or four lots.
Q. I want to find out how much weight you put upon the proximity of Dupont circle and upon the improvements as enhancing the value of property. In order to do that I will ask you if you consider the northwest corner here, which is surrounded by, I believe, entirely vacant land——
A. (Interposing.) They are as good houses as here.
Q. Wait a minute—the corners of which are vacant, and which is much further away from Dupont circle, how would you compare it in point of price; how much more valuable would you consider——
A. (Interposing.) Very little difference between the two.
Q. How much would you consider those per square foot, treating it as a whole?
A. Point out which lot. Lot 17?
Q. Yes.
A. I should say a difference of half a dollar a foot.
Q. In favor of which corner?
A. In favor of the northwest corner of New Hampshire avenue and Q street.
Q. Are you aware that the northwest corner of New Hampshire avenue and R street is surrounded by vacant corners—nothing being built on any of the corners surrounding it?
A. Yes, sir.
Q. You are aware of that?
A. Yes, sir; I am aware of that fact.
Q. And you are aware that in the immediate locality of the northwest corner of New Hampshire avenue and R street houses are the exception, the land being principally vacant land around there?
A. There are houses here in this square (indicating), and there are three houses here. There is a house here and one here (indicating).
Q. There is only one house on the whole square of New Hampshire avenue between R street and Riggs place?
A. Yes, sir; and one between Riggs place and the other street.
Q. And there is only one house between R street, on the other side of New Hampshire avenue, between R street and S street, with the exception of the house upon the corner of S street?
1059
A. Mr. Hamilton's house.
Q. Is not that so?

A. Yes, sir; I think that is about right.

Q. So that it is a fact that this northwest corner of New Hampshire avenue and R is principally surrounded by unoccupied land in its immediate vicinity?

A. Yes, sir; with the exception of this ground here (indicating), within one square of this other residence, this fine residence below.

Q. Now, taking those facts into consideration, would you not say that the close proximity of the northwest corner of New Hampshire avenue and Q to Dupont circle, and the costly and beautiful nature of the residences immediately surrounding it on the other corners, being the Van Wyck house, the Schneider house or Chinese legation, the Clover house, the Whittemore house, and the Leiter house, make this northwest corner of New Hampshire avenue and Q street more valuable than fifty cents per square foot difference from the northwest corner of New Hampshire avenue and R.

A. I do not think there is but little difference. They have the advantage of these elegant houses just as much as these have (indicating); not exactly as much, but that is what drew these people up there.

Q. Does not this northwest corner of New Hampshire avenue and R street incur the risk, possibly, of undesirable structures being erected around it? Is there not such a danger, however remote?

A. There is always danger in anything.

Q. As a matter of fact, is there not a school-house on R street within a very short distance of the northwest corner of New Hampshire avenue and R street?

A. Yes, sir.

Q. Known as the Adams building?

A. Yes, sir; within two or three hundred feet.

Q. Do you know who owns the northwest corner of New Hampshire avenue and R street?

A. No, sir; I do not.

Q. Do you know whether it is built upon or vacant?

A. New Hampshire avenue and what?

Q. New Hampshire avenue and R street, the northwest corner.

A. Yes, sir.

Q. Who owns it?

A. I think that Mrs. Page owns it. I do not know who the title is in.

Q. Do you know how long ago she bought it?

A. No, sir; I could not tell the exact date. I think about two or three years ago. I am not positive about that.

Q. Do you know what she paid for it a square foot?

A. No, sir; I do not. I knew at the time, but I do not recall the amount.

Q. Yet you consider yourself acquainted with the sales of real estate up in that locality about the time you are testifying?

A. I do not know of any sales in that locality, with the exception of that sale, during that time. I did not know of any other corner being sold, and I do not know in regard to the date of the sale of that. I remember of its being sold.

1060 Q. And you do not know the price at which that property was sold?

A. No, sir; I do not know the price.

Q. You are not very familiar with the sales up in that locality?

A. Yes, sir; I have been familiar with that part of the town, and sold a great deal of property, but not at the time named in the question asked me in regard to 1896.

Q. You are not familiar with the sales about that time, are you?

Mr. MATTINGLY: He has already answered that he does not know of any other sales having been made.

The WITNESS: I have answered that question.

Q. Did you ever hear of the sale of the Hooe triangle?

A. Which triangle? You mean the one the church is on?

Q. The Hooe triangle, at New Hampshire avenue, R and Eighteenth street.

A. Yes; I heard of the sale, but I do not know the transfer of the property. I heard the property was sold. It had been in litigation, but I never knew of the transfer.

Q. Do you know whether it has been sold at private or public sale?

A. No, sir; I could not tell you. I know it was offered for sale a great many times. There was some trouble with the title. Whether that was perfected or not I do not know.

Q. What was the trouble with the title?

A. I could not tell you. There was some difficulty in the title; why I know that is because I was interested once in trying to negotiate in regard to that for a church lot. The party dropped it.

Q. What was the trouble in the title?

A. I cannot tell you what the difficulty was. The trouble in the title was, I presume, that they could not convey title at that time. I think it was about four years ago.

Q. Was there a cloud on the title?

A. I told you once I could not tell what it was.

Q. You only know there was a sale of that property without knowing whether it was a private or public sale; is that right?

A. Yes, sir.

Q. Do you know when it was?

A. No, sir; I do not.

Q. An important piece of property up in that locality, is it not?

A. Yes, sir; it is a good piece of property.

Q. Do you think you are really familiar with sales up there?

A. I am familiar——

Q. Can you answer yes or no?

Mr. MATTINGLY: Answer it in your own way.

Q. I asked the witness if he can answer yes or no.

A. I am familiar as other real-estate men are familiar, not taking a note or making a record of everything that occurs. I do not propose to answer questions that I do not know. If I made up a record of all the sales in Washington, I would be pretty busy.

Q. That is a very important sale of property not to be familiar with by a person professing to appraise property up there, is it not?

A. It has no bearing on this case at all. I am giving my opinion.

1061 Q. You do not base your opinion, do you, upon what property sold for up in that locality about the time you are testifying?

A. There were no sales of any account at the time I am testifying about, two years ago, 1896.

Q. That is what you think?

A. In that locality, with the exception of the Page house and this lot that you speak of, I do not remember any immediate sales in the three blocks there of any corner property.

Q. And you profess you are ignorant of the prices that those sales brought?

A. I profess I do not remember the price at which either one of those properties sold. I do not now remember the prices at which they sold.

Q. And you think there was no other important sale up in that locality about that time?

A. Not within this vicinity. If there was, I do not remember.

Q. You do not?

A. I do not.

Q. Do you call the distance of a block from that corner in that vicinity?

A. Yes; I would.

Q. Have you heard of the Church of the Holy Cross property at P and Eighteenth street?

A. Yes; I know where it is.

Q. When was the last sale of that property?

A. I cannot tell you when the last sale was. I remember when it was sold several years ago, six or eight years ago, for Senator Van Wyck, I think.

Q. Do you know of any sale of that property?

A. It has been transferred since.

Q. Do you know of the sale of that property in 1896, concerning which you are testifying?

A. I do not know when it was sold. I know it was sold the second time.

Q. That is another important and prominent sale, is it not?

A. It is a good sale and a fine lot and an economical lot, all frontage. I know about that lot, because I sold it once myself, but I did not get the transfer of it.

Q. You do not know whether or not that property was sold in 1896, do you?

A. I could not say the date; no, sir.

Q. And you do not know the price at which it sold per square foot, do you?

A. No, sir; I do not.

Q. Now, do you really think you are familiar with the sales of real estate up in that locality?

A. I think I am familiar with the values there when I am asked in regard to a piece of property like this, from the standpoint of having sold property to other people and sold for other people, as the question was asked me by Mr. Mattingly.

Q. But you admit that you do not know——

A. I admit I do not know the price at which these properties sold, as I cannot recollect them now. I have not refreshed my memory in regard to any of those. I merely looked at this one piece of property with regard to its value at the time you asked.

Q. What did Mr. Whittemore pay for his property?

A. I cannot tell you.

Q. How does the real-estate market compare now with the 1062 real-estate market in 1896?

A. I think it is a little better now than it was then. It has been depressed for the last four or five years; it has only been very few sales of prominent corners like that; the general business has been very much depressed, more so than for a great many years.

Q. Did you ever hear of the sale of the property known as the Louise Home?

A. No, sir; I never heard of Louise Home being sold. It cannot be sold. I have heard of Mr. Carpenter buying a piece of property there and did not get it.

Q. What did Mr. Boardman pay for his property?

A. I cannot answer these questions for this reason——

Q. I do not care to know the reasons. I do not ask for your reasons. I am satisfied you are not able to answer.

Mr. MATTINGLY: State your reasons.

A. I will, and you can throw it out if you choose, because nearly half or more of the property sold and the prices given are given in the newspapers as supposable prices. A great deal of the property is transferred at a nominal price. We have no positive knowledge that the property brought the price stated, so that no man can say the property brought $5, $6, or $7 a foot.

Q. If we want to know what is reported in the newspapers, we might have summoned reporters to tell us. Do you think you were brought here to tell us what was reported in the newspapers?

A. I do not say what was reported. I merely say to you how we get information a good many times when property is transferred. The persons who sell the property have personal knowledge of the price at which it was sold, but not others. If a deed goes on record for a piece of property at $100, no one knows what the actual price is except the parties concerned in it.

Q. I am not inquiring about newspaper reports, but I am trying to get at your knowledge.

A. I answered your question.

Q. Your knowledge is what I want if you have any. I do not care anything about what the newspapers say. Do you know of any sale in that locality between the Whittemore house and the Leiter house?

A. I know there was a sale there, but I could not tell you the particulars in regard to it.

Q. When was the sale?

A. I think it was within the last twelve months. I am not positive about that.

Q. Do you know how much it sold for a square foot?

A. No, sir.

Q. You do not know that?

A. No, sir.

Q. Do you know to whom it was sold?

A. No, sir; not now I do not.

Q. Do you know by what broker it was sold?

A. I cannot answer that positively. I think Mr. Weimer sold the property, but of that I am not positive. I only speak from memory.

Q. Do you know of the sale of property adjoining the Whittemore property—immediately adjoining the Whittemore property—on the corner of New Hampshire avenue and Q streets?

A. The Whittemore property?

1063 Q. Yes; over here (indicating on plat); right immediately adjoining it, between this house and here?

A. No, sir; I do not remember that sale at all.

THEODORE A. HARDING.

ROB'T L. MILLER, *Examiner.*

EDDY B. TOWNSEND, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. MATTINGLY:

Q. State your occupation.

A. I am engaged in the real-estate business, or real-estate broker.

Q. How long have you been engaged in that business?

A. I have been real-estate broker for a little over fifteen years.

Q. What firm are you a member of?

A. I am a member of the firm of James A. Bates & Company. I am the firm.

Q. In your business have you acquired a knowledge of real-estate values generally in this city?

A. Generally so.

Q. Are you familiar with the northwest corner of New Hampshire avenue and Q streets?

A. Yes, sir.

Q. Lots 1, 2, 3, and 66, square 134?

A. I do not carry those numbers in my head (referring to plat). I am.

Q. Please state what, in your opinion, that property was worth in April, 1896.

Mr. KEANE: Objected to on the ground that no proper fundation has been laid to qualify this witness as an expert as to the value of the real-estate market in this city.

A. I would not undertake to answer a question of that kind. It would be almost impossible to bring myself down to a month—the exact date. In a general way, I could answer for that period.

Q. Answer it in your own way.

A. What, in my judgment, it would be worth? I would put the corner lot at $4 or $4.25 and the other at $2.50 or $2.75.

Q. Please state the basis of that opinion.

A. It is due largely to its location and surroundings and sales in the immediate neighborhood, within two or three blocks.

Cross-examination.

By Mr. KEANE:

Q. Are you familiar with the sales of real estate up in that locality?

A. Reasonably so, as a man can be.

Q. Is there much difference between the market today and the market then?

A. In that exact locality or speaking of the city as a whole?

A. That exact locality.

A. Very little; possibly a slight advance.

1064 Q. Do you derive your knowledge of what real estate is worth in a given locality from what you know property in that locality is selling for?

A. I could hardly form an intelligent opinion in any other way.

Q. What sale of real estate do you know of in that locality around the time that you speak of?

A. Some lots on Eighteenth street; some lots on R street.

Q. Do you know of the sale on the northwest corner of New Hampshire avenue and R street?

A. I knew of it at the time.

Q. How would you consider that corner compared in value with the northwest corner of New Hampshire avenue and Q street?

A. In my judgment there is a slight difference in favor of the corner of New Hampshire avenue and Q streets.

Q. For what reason?

A. First, it is a little nearer transportation; it has an air space in front of it, or two of them; it is a little nearer the center of fashionable dwellings.

Q. And it has elegant and costly houses surrounding it, has it not?

A. It has some, and some not so elegant.

Q. Are not all the houses on the four other corners what you would call costly and elegant houses—the Clover house, the Whittemore house——

A. I am not aware of four other corners at that particular locality.

Q. Are there not the Whittemore corner, the Clover corner——

A. (Interrupting.) There would hardly be four other corners.

Q. Are there not three streets at that junction and four corners; is not there the Whittemore corner, the Clover corner, the Chinese legation or Schneider corner, and the Van Wyck corner?

A. I should not regard the Schneider corner on New Hampshire avenue, by any means. Literally the Schneider corner is not on New Hampshire avenue; consequently there can be no four corners.

Q. Do not three streets cross each other there—New Hampshire avenue, Q street, and Eighteenth?

A. They intersect there.

Q. Forming five corners, do they not?

A. No, sir; I should insist upon it that the Schneider house is not on New Hampshire avenue. The west line of Eighteenth street would be there (indicating), but the Schneider house would not be there.

Q. The question is whether at that junction there are not three streets—namely, New Hampshire avenue, Q street, and Eighteenth street—whose intersection forms at that junction five corners, namely, this corner, the northwest corner of New Hampshire avenue and Q street, about which we are concerned; the Whittemore corner, the corner on which stands the Clover house, the corner on which stands the Chinese legation or Schneider house, and the corner on which stands the Van Wyck house.

A. I understand your question, and I still insist that the Schneider house is not on New Hampshire avenue. It is a mathematical problem and is susceptible of demonstration. I do not see how there can be five corners.

Q. You think my question is whether the Schneider house is on New Hampshire avenue or not?

A. Pardon me. Your original question was four other
1065 corners beside the one under discussion. I do not see other corners in addition to the one in controversy.

Q. I will not argue with you. Do you know who owns the northwest corner of New Hampshire avenue and R street?

A. I do not, except by general report. I never examined the record to ascertain.

Q. Do you know when the last sale on that corner was?

A. Two or three years ago.

Q. Do you know how much it sold for per square foot?

A. I do not.

Q. Do you know the Church of the Holy Cross property?

A. I do.

Q. Do you know who was the last purchaser of that property?

A. I do not.

Q. Do you know of the sale of that property in 1896?

A. I know it has been sold, and I judge about that time—within the past two or two and a half years.

Q. Do you know what the purchaser paid for it a square foot?

A. I think $8, if my memory serves me—$8 or in that neighborhood.

Q. That was in the fall of 1896, was it not?

A. I cannot say. When we need these facts we are in the habit of referring to the record; we do not carry them around in our heads.

Q. How did the market in the fall of 1896 compare with the

market in the spring of 1896? Was it better or worse or about the same?

A. I should answer that question by saying in favorite localities it remained about the same without any appreciable change. In other localities there was a marked decline.

Q. Is this northwest corner of New Hampshire avenue and Q street a choice property?

A. I should call it a desirable corner, a desirable locality.

Q. Do you know what Mr. Whittemore paid for his property?

A. I do not.

Q. Do you know what the property on the other side of Whittemore's house on New Hampshire avenue sold for recently?

A. Within a year or two, I understand, that changed hands at about $6.50 a foot. My recollection is about that.

Q. Do you know what the property immediately next to Mr. Whittemore's property on Q street was bought for by him?

A. I do not.

Q. Did you ever hear of the sale of the Hooe triangle on——

A. (Interposing.) I did. I understood it was sold.

Q. On Eighteenth, R, and New Hampshire avenue?

A. Yes; within the last two or three years.

Q. Do you know when that was?

A. I could not give the exact date.

Q. Do you know whether it was sold at public or private sale?

A. I do not.

Q. Do you know at what price it sold per square foot?

A. I do not.

EDDY B. TOWNSEND.

ROBT L. MILLER, *Examiner.*

1066 JOHN E. MCLERAN, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. MATTINGLY:

Q. How old are you?

A. About thirty-five.

Q. State what your business is.

A. Real-estate broker.

Q. How long have you been engaged in that business in this city?

A. About twelve years.

Q. Have you been actively engaged in it?

A. Yes, sir.

Q. Buying and selling?

A. Yes, sir.

Q. Are you generally familiar with the values of real estate in this city?

A. I am.

Q. Calling your attention *ot* the property at the northwest corner of New Hampshire avenue and Q street, lots 1, 2, 3, and 66, square

134, please state what, in your opinion, that property was worth in April, 1896.

Mr. KEANE: Objected to on the ground that no proper foundation has been laid to qualify this witness as an expert as to the value of real estate in Washington.

A. Do you want the valuation of it as a whole, the four lots?
Q. Value it in your own way.
A. Or by separate lots. In my opinion, lots 1 and 66 are worth $4.50 a square foot; lot 2, $3.50 per square foot; lot 3, $3 per square foot.

Cross-examination.

By Mr. KEANE:

Q. What paper is that you are looking at?
A. It is a memorandum of the value of the lots which I made before I left my office.
Q. Did you speak to Mr. Warner about the values of those lots?
A. Yes, sir.
Q. Recently?
A. Just before I came here this morning.
Q. Will you tell what he said to you?
A. Mr. Warner asked me what I thought their value was, and I told him just about the same I have stated here.
Q. What else was said?
A. Mr. Warner said my valuations corresponded with the testimony of two former witnesses.
Q. He told you that?
A. Not exactly, but approximately he did.
Q. What else did he say?
A. Mr. Warner told me he would like to——
Q. (Interposing.) Please continue. Tell us everything he said to you.
A. Mr. Warner told me that I would go on the stand in a few minutes and not to be frightened. I told him I would not, I had been on the stand before. I think that was all that was said.
Q. Did he refer to the values of any of the pieces of property in that locality?
A. He did.
1067 Q. What other pieces of property?
A. After I had given him my valuation, he asked me what I thought the Page property brought.
Q. What did you say to him?
A. I told him I did not remember.
Q. What did he say to you?
A. He said, I think—I am not positive—I think he said it brought $6 a foot.
Q. What other property did he refer to?
A. He referred to the property bought for the Church of the Holy Cross.

Q. What did he say to you about that?

A. He simply stated, as near as I can remember his words, the property sold to the Church of the Holy Cross was a fancy piece of property, without mentioning the value that it brought, which I did not know, and I said, Yes; it is a fancy piece of property, and very fancy; it being right opposite Dupont circle; that is all.

Q. And he held that conversation with you immediately before you took the stand?

A. Yes, sir.

Q. Did you come here to oblige Mr. Warner?

A. I beg your pardon.

Q. Did you come here at Mr. Warner's request, to oblige him?

A. I came here to oblige him; yes.

Q. When did he ask you to come?

A. Yesterday he telephoned my office and asked me to come. I told him I could not come; I was very busy, and asked him to make another appointment. He telephoned me again this morning, and I told him I would come at half past 11.

Q. You were not served with a subpœna, were you?

A. No, sir.

Q. You just came voluntarily, as a favor to Mr. Warner?

A. At his request.

Q. Why were you willing to be so accommodating; is Mr. Warner a friend of yours?

A. He is.

Q. How long have you known him?

A. I have known Mr. Warner personally for seven or eight years.

Q. You have never had any business with Mr. Warner, have you?

A. I think I have never consummated a piece of business with Mr. Warner.

Q. You never had any business relations at all, have you?

A. No; I have not had any personal business relations with him, and I do not know that our offices have ever transacted a sale or loan together—that is, we have never transacted any business so that I have come in contact with Mr. Warner in a business way, except meeting him about town. We have tried to have deals together, but never had any.

Q. Your relations with Mr. Warner have been entirely outside of business?

A. On the contrary, they have been inside of business.

Q. I thought you said you never had any business relations with him?

A. I do not think I said that.

Q. Did you or did you not have any business relations with him?

A. I have had business relations with him in trying to effect sales, but I have never succeeded.

1068 Q. When was your last business of that kind with Mr. Warner; how long ago?

A. About two years ago, as I remember.

Q. When was the last sale you made of property up in the locality of the northwest corner of New Hampshire avenue and Q street, in that immediate locality?

A. I think it would be impossible to give the date except in a very general way. Sales have been very few in the last five, six, or seven years.

Q. Very few of any kind or very few in that locality?

A. Very few in that locality, and very few in other localities in Washington. I think it would be, as I can remember, about '93 or '94 the last sales were made there by us.

Q. Now, tell me what the condition of the market has been in the last five or six years.

A. There has been practically no market for lots in the last five or six years in the sense that we formerly spoke of a market. The only market that there has been has been created by people wishing to buy for homes. A speculative market has not existed practically within the last four or five years; in other words, unless a person wanted a piece of property for a specific purpose, he did not buy it unless it was very low; very much under the market, I might add.

Q. That is, a bargain?

A. A bargain.

Q. Always readily find purchasers for bargains, can you not?

A. In the last few years they had to be very big bargains to find purchasers for them, very big bargains.

Q. What kind of property is this northwest corner of New Hampshire avenue and Q street? Would you call it choice property?

A. Yes, sir.

Q. Would you not call it very desirable property for the purpose of a person who might desire to build a handsome residence for himself?

A. I would.

Q. You would not consider that any person could buy at such a price as you have indicated?

A. That they would buy?

Q. You would not consider that any person could buy at such a price as you have named?

A. Yes; I would consider it could have been done.

Q. You think that would be about its value sold to a person for the purpose of a private residence, a person who wanted to locate there, do you?

A. I think it would. The valuations, as I remember them—I have not figured them very plainly—come to somewhere near $30,000, and that is considered an expensive residence lot in Washington.

Q. Do you consider that that property is made more desirable by the procimity of Dupont circle than if it was further remote?

A. Oh, yes; the nearer it is to Dupont circle, of course the nearer it is to the fashionable section, and consequently more valuable than if six or seven blocks away.

Q. More valuable on that account?

A. Yes, sir; more valuable.

Q. Do you think its valuation is enhanced on account of costly and beautiful residences erected on the other four corners surrounding it?

A. I do; most certainly.

1069 Q. For those reasons would you consider it more valuable than the northwest corner of New Hampshire avenue and R street, two blocks away, surrounded by vacant corners?

A. It would depend somewhat upon the shape of the lot. Generally speaking, I would consider it more valuable than the corner of R and New Hampshire avenue. It might be, however, that a lot on the corner of R and New Hampshire avenue might have a peculiarly adaptable shape, and, having a good outlet in the rear, would be more valuable. I am not informed of the shape of the lot that Mr. Page built on.

Q. Now, I ask you what you know about the sale of the Hooe property there at New Hampshire avenue and Eighteenth and R; do you know of the sale of that property at any time recently?

A. No; I tried to buy it once some years ago.

Q. When was the last sale of that property; do you know?

A. I did not hear about the sale. At least, if I did it has escaped me.

Q. Had you heard of the sale of this northwest corner of New Hampshire avenue and R street before Mr. Warner had the conversation with you, immediately before your going on the witness stand today?

A. Yes, sir; I knew Mr. Page bought it and built that house on it.

Q. Had you known of the price Mr. Page bought it for before Mr. Warner instructed you before you went on the witness stand?

A. No; not definitely.

Q. You were ignorant of it at that time?

A. I knew in a general way. I heard the price at the time, but I had not remembered it and would not have remembered it if you had asked me the question at this time.

Q. And therefore, not knowing either the price at which this northwest corner of New Hampshire avenue and R street sold until Mr. Warner told you a few minutes ago, before you went on the witness stand, and not knowing even now the price at which the Hooe property sold or when the sale was or whether it was a private sale or public sale, would you think that you were well informed about the sales up in that locality?

A. I do not think I have ever stated I was. I said I was familiar with the values in that locality, and I know some of the sales that have happened there, but not those particular ones.

Q. Do you not think if you were well informed about the sales in that locality you would have known of those sales?

A. I did not say I was well informed of the sales that had been made there. There may have been a great many others made there that I do not know about. It is not my business to know every sale made in any specific locality. It is a very difficult thing for any

real-estate man to do that and at the same time take care of his own business.

Q. Can you arrive at the value of real estate in any given locality at any given time without knowing the price at which real estate in that locality is selling at that time?

A. The process or the prices?

Q. The prices.

Question repeated.

1070 A. We can arrive at it by knowing what it sold for before that time and then by knowing the condition of the real-estate market at the specific time, and could form a pretty shrewd judgment of it and the sales that had been made after that time without knowing the sales that had been made that particular year. The market is very gradual in its evolution. I may say that I have known of other sales that have happened in that section.

Q. If you are very familiar with the sales of property in that locality, do you not think you would have known of the prominent sales I have named and know the price at which the property sold?

A. I knew of the Page sale and I knew at the time the price at which it sold, but I have no special occasion to remember the price per foot. I do not think that is necessary to give an opinion. I think that in a general way.

Q. Do you think the facts you have forgotten are of any assistance to you in fixing an appraisal of real estate?

A. I think you may forget specific facts, and yet have the effect of those facts in your mind in such a way as to be useful and reliable.

Q. So you think that having forgotten, if you ever knew, the price at which—before Mr. Warner instructed you a minute or two ago—the Page property sold, and not knowing the price at which the Hooe property sold, that it would be of any service to you now in forming an estimate of the value of this northwest corner of New Hampshire avenue and Q street, that you knew of these things once upon a time?

A. I would answer that as a psychological question. I think it would be, but in view of the fact that I know of a great many others that I can name to you, five or six other sales, if you desire, in that locality, I do not think the specific knowledge of that property has anything to do with my opinion.

Q. Would you not consider the northwest corner of New Hampshire avenue and R street would most nearly approximate in similarity of value the corner of New Hampshire avenue and Q than any other property in that immediate locality?

A. Certainly not exactly like it, because the northwest corner of R and New Hampshire avenue has an alley outlet, if you will notice.

Q. Kindly answer my question.

Question repeated.

A. No.

Q. What other corner in that immediate neighborhood would

you consider would more closely approximate in value to the northwest corner of New Hampshire avenue and Q?

A. I have not got the whole map here. There may be some others there that I cannot see here.

Q. You need not lose time in answering that question.

A. I am perfectly willing to answer the question to the best of my ability, but I do not want to give a false impression. I think there is a difference and a very decided difference in every piece of property unless you take two similar lots, one by the side of the other.

1071 Q. What other corner in that immediate locality do you think would approximate—approximate does not mean similar.

A. Every one of these corners are so alike in a general way.

Q. Are they alike in the proximity to Dupont circle?

A. No, sir.

Q. Are they alike in being built up and being surrounded by costly residences?

A. Yes, sir; I think here is one here, George E. Hamilton's house, a very handsome colonial house, and a very handsome one next to it; several handsome ones near here (indicating)—Knox house, the expressman.

Q. How many squares away from Dupont circle is Mr. Hamilton's house—four squares, is it not?

A. Yes; four squares.

Q. Did you know before Mr. Warner prompted you, prior to your going on the witness stand, what the Church of the Holy Cross property sold for?

A. No, sir; he did not tell me.

Q. That was rather a prominent sale of real estate up in that locality, was it not?

A. I knew it was sold and the price at that time.

Q. But, again, you have forgotten?

A. Specifically; yes, sir.

Q. Do you know to whom that property was sold?

A. No; I do not.

Q. You do not know that that property was sold the very year, 1896, concerning which you are testifying?

A. No, sir; I do not.

Q. Do you know of the sale of real estate the other side of the Whittemore house, on New Hampshire avenue?

A. I know of a sale having been made there.

Q. Do you know how much a square foot the property was sold for?

A. 87, as I remember.

Q. How long ago was that?

A. Within a year, I think.

Q. Do you know what Mr. Whittemore paid for his property?

A. I do not.

Q. Do you know the sale of the property on the other side of Mr. Whittemore's property, on Q street?

A. I do.

Q. Which was bought by Mr. Whittemore?

A. I do not remember who bought it. I thought it had been bought by Mr. Weimer or Lane, the builder. Mr. Lane built a house on it.

Q. I speak of the property between Mr. Lane's house and Mr. Whittemore's house, adjoining Mr. Whittemore's house.

A. I understand the lot was sold there at $4 a foot.

Q. Do you not know that Mr. Whittemore paid $6.75 a foot for the property of which I speak?

A. No; I did not know that.

Redirect examination.

By Mr. MATTINGLY:

Q. Please state whether or not you were influenced in your judgment as to the valuation of this property by the conversation you had with Mr. Warner to which you have referred.

A. Most decidedly not.

1072 By Mr. KEANE:

Q. That is, so far as you think conscientiously?

A. So far as I know, of course.

JNO. E. McLERAN.

Subscribed and sworn to before me this 4th day of June, A. D. 1898.

ROB'T L. MILLER,
Examiner in Chancery.

ELLEN S. MUSSEY resumed the stand for further cross-examination.

By Mr. KEANE:

Q. I hand you an instrument marked Exhibit B. H. W., February 19, 1898, R. L. Miller, examiner, and ask you whether that is the paper you referred to in your testimony as an option which you said was brought to you by Mr. Wine on April 10, 1896, at the time when he paid you a deposit of $500.

A. (After examining the paper.) This is the paper I referred to, but I did not state that he paid to me a deposit of $500. I said that the paper recited that a deposit of $500 was paid.

Q. Is that the paper that you had in mind when you spoke of an option?

A. It was.

Q. Will you kindly read that paper and state whether, after reading it, it is what you would describe as an option or an absolute contract of sale.

A. This is the paper I referred to. I shall not give any legal opinion as to what kind of a paper or what it legally constitutes.

Q. Do you find any option in that paper of any kind?

A. The paper is before you and you can find what you choose in it.

Q. At the time that Mr. Wine handed you that paper did it bear the signature of L. W. Richardson or not?

A. I do not remember.

Q. Is that the signature of Stephen A. Dutton on the instrument?

A. That is his signature.

Q. And it was signed in your presence?

A. It was.

Q. After Mr. Dutton signed that instrument, what, if anything, did you do with it?

A. I gave it to Mr. Wine.

Q. When did you give it to him?

A. I really do not remember whether I gave it to him that night or the next morning. I may have mailed it to him; I do not remember.

Q. To what night do you refer; the tenth of April?

A. Yes; I may have mailed it to him; I do not know; I sent it to him in some way.

Q. Had Mr. Wine told you, at your interview with him in the morning of the tenth of April, 1896, that he would bring you around this contract of sale?

A. He did not.

Q. Had an oral agreement been made in the morning for the sale of that property when you saw Mr. Warner and Mr. Wine or
1073 was this instrument your first knowledge that your proposition was accepted?

A. That was the first knowledge I had of it.

Q. And that was within a few hours after you had held your first interview with Mr. Warner and Mr. Wine at their office?

A. My interview was with them in the morning, and this was in the afternoon.

Q. Did you consider that a pretty quick sale for a dull market?

A. I did.

Q. Do you know of any reason why Mr. Warner and Mr. Wine accepted your proposition so promptly and in such haste, except they considered that you had offered them a great bargain, which they did not want to lose?

A. I had made the offer on the condition that it should find a ready purchaser at that price.

Q. And do you know of any reason why they should have been willing to accept your condition and conclude the transaction in such haste, except that they considered you had offered them a great bargain, and they were not willing to take the chances of losing it?

A. I know of no other reason.

Q. I will read you the following questions propounded to Mr. Wine in the bill of discovery here and his answer thereto, and ask you whether he is correct or not in his statement, according to your recollect- of the fact: "Did you disclose to Mrs. Musgey at the time of said transaction, to wit, in April, 1896, that Louis Wine Richardson was merely a dummy, and that you and your partner were the

real purchasers? A. I said nothing to Mrs. Mussey upon the subject of Louis Wine Richardson's connection with the matter."

A. I think that is correct.

Q. When did you first learn that Mr. Richardson was only a dummy, in whose name the title was taken?

A. It was several months after that.

Q. Can you state more definitely exactly the time when you first learned that Mr. Richardson was a dummy in that transaction and not the real purchaser of the property?

A. It was some time, I think, in the following fall or autumn, but when I do not remember.

Q. Will you kindly state who told you or how you learned that fact?

A. I do not know who told me, but I think Mr. Wine told me. I may be mistaken.

Q. You have no positive recollection about the matter?

A. No; I have not.

Q. Will you state the circumstances under which you learned in the fall that Mr. Richardson was a dummy in that transaction and not the real purchaser?

A. I have no recollection now about the circumstances.

Q. So that at the time of this transaction, in April, 1896, when you agreed with Mr. Warner and Mr. Wine to share with them the commission, they to have two-thirds, or $500, and you to have one-third, or $250, so far as any knowledge that you had on the subject is concerned, you were treating with them as the brokers of Louis W. Richardson or whoever the purchaser was. Is
1074 that so?

A. I treated with them as the brokers, and had no interest in who purchased it, so long as the money was paid for it.

Q. Do you know why it was that they concealed from you that they were the purchasers themselves, and allowed you to suppose that Richardson was the purchaser, and not a dummy?

A. I never asked them about it, and I know nothing about it.

Q. Please state the name of every person to whom you applied concerning this property, from the time of Dutton's first interview with you on March 30th, 1896, until your first visit to the office of Warner and Wine on April 10, 1896.

A. I will, so far as I can remember. I went to the American Security and Trust Company.

Q. To whom did you apply there?

A. I really do not know. It was not a gentleman with whom I was familiar. He was in the trust department.

Q. Have you any idea who he was?

A. I do not know.

Q. Describe him.

A. He was a fair-haired man, I remember. That is all I remember about him now.

Q. Was he small?

A. No; he was not a small man.

Q. Whereabouts was his desk?

A. In the trust department, the real-estate part.
Q. Was it James F. Hood?
A. It was not.
Q. Did you ever know his name?
A. No; I never knew his name. I was not acquainted with him.
Q. Would you know him if you saw him again?
A. Perhaps I would. I do not know whether I would recognize him or not.
Q. Where else did you apply?
A. To Mr. Edson.
Q. Where else?
A. To Smith & Company, the agents of a Philadelphia Company.
Q. Smith & Company. What is their address?
A. F street between Fourteenth and Fifteenth.
Q. Whom did you see there?
A. I really do not know. I am not acquainted in that office.
Q. And you do not know whom you saw there?
A. I do not.
Q. Did you ever know his name?
A. I never did.
Q. Would you know him if you saw him again?
A. I do not think I would.
Q. To what Philadelphia company do you refer?
A. The Philadelphia company that held one or two of these trusts on this lot.
Q. Do you mean the Provident Life and Trust Company?
A. I do not remember the name, whatever it was, that held one or two of the trusts on this property.
Q. That was the Provident Life and Trust Company of Philadelphia?
A. I do not remember.
Q. Do you say that Smith & Company represented them?
A. That is what I understood; I went there to see them.
Q. You cannot remember anything about the man you saw at Smith & Company?
A. No; I do not remember.
Q. Where else did you apply?
A. I went and talked, after talking with Mr. Edson, to Fisher & Company, and there learned more about the property than I had elsewhere.
1075 Q. Whom did you see there?
A. I do not know who that was.
Q. Did you ever know his name?
A. No; I never knew his name.
Q. Would you know him if you saw him again?
A. No; I would not remember, and I did not distinguish him at all.
Q. Have you always had a bad memory?
A. I will allow you to judge of that.
Q. Where else did you go?
A. These are the only ones I remember.

Q. Why is it that your memory seems to be so weak and defective in regard to all those matters, and yet that you seem to be able to remember conversation and the details of it with Mr. John Joy Edson? Can you give any reason for that remarkable fact?

A. You can choose your own reasons.

Q. Will you please explain why, in closing the transaction on April 13, 1896, Mr. Dutton was given two checks, one for $4,000 and the other for $2,026.67, instead of a single check including both amounts?

A. I do not remember the size of the checks. Aside from the checks that were given for the expenses, the commission, and so forth, matters of that kind, the checks to Dutton were given in exactly the amount he requested Mr. Edmonston to give them. I do not remember what they were.

Q. And you can give no explanation as to why Mr. Dutton was to give two checks instead of one?

A. Only that he requested it should be given in two checks.

Q. And do you know what he wanted the two checks for?

A I have no idea.

Q. Was not the check for $2,026.67 intended to take up the note held by Deeble & Davis of $2,000, with interest, secured by a deed of trust on the property?

A. Not to my knowledge.

Q. Will you please explain the check of $309.66 paid to you, giving the items on account of which you received said check?

A. I really could not explain the items. It was a personal matter. It was my personal bill of expenses, and I cannot explain the items, and would not if I could.

Q. What would be your objection to doing so?

A. It was a personal matter. It was a personal bill for services and expenses in this transaction, and I should object to doing anything of the kind.

Q. Do you not know there are other persons besides yourself who have an interest in that transaction?

A. I do not. There was no one but myself and Mr. Dutton interested in that bill. It was satisfactory to me and satisfactory to him.

Q. Do you keep books?

A. I do.

Q. Is there any record of that check in your books?

A. I presume Mr. Dutton was credited with that check.

Q. By referring to your books could you not inform us of the items that made up that amount of $309.66?

A. I presume I could if I chose to do so.

Q. Do you refuse to do so?

A. I do.

1076 Q. Was part of that $309.66 your disbursements?

A. It was.

Q. How much of it was disbursement?

A. I cannot tell you.

Q. Why? Do you recollect?

A. I do not recollect.

Q. What is there about that check of $309.66 that makes you so reluctant to explain it?

A. There is nothing about that check for $300 and odd cents that makes me so reluctant, except that it is my own personal matter and a matter between Dutton and myself.

Q. Are you really reluctant to produce the letters that you received from Twombly in regard to this property and to the debt of $10,000 due him by Dutton?

A. I am.

Q. And you refuse also to produce those letters?

A. I do.

Q. Was there no special reason of which you have knowledge why Mr. Warner kept in the background and avoided meeting Dutton, leaving Mr. Wine to conduct the transaction alone?

A. None that I know of.

Q. Was not one of the last things Mr. Dutton said to you in Mr. Czaki's presence before going to New York on April 13, 1896, when you met him at your office, coming down the stairs, on your return from depositing the checks in your bank, namely, "Let me know when the balance of the loan is ready"?

A. I do not remember any such transaction.

Q. If Mr. Czaki has sworn in an affidavit as follows: "He left Mrs. Mussey's office, and in going out met her. Dutton requested she write him in New York when she would be able to put through the balance of the transaction. We then returned to New York," would you be willing to say he was mistaken?

A. I should not. I should say I did not hear it or remember hearing it.

Q. Did not Mr. Czaki return to Washington the following week to receive the balance of the loan, not yet having learned it was a sale?

A. I have heard that he did, but I was not in Washing- at that time and did not meet him.

Q. When did you next meet Mr. Czaki after April, 1896?

A. I think it was in the following month; some time in the spring or early summer.

Q. Where was it you saw him?

A. In my office.

Q. And that was the first occasion of your meeting Mr. Czaki after the thirteenth of April, 1896, when he left with Dutton for New York?

A. It was.

Q. Now, how nearly can you fix the date of this meeting?

A. I cannot fix it any nearer than that. I should judge it was in May, but I am not sure. My recollection would vary five or six weeks about that visit, as it was two years ago.

Q. And did not Mr. Czaki have any fault at all to find with you for having aided Dutton to dispose of his property while deceiving and pretending to Czaki that you were getting a loan?

A. I should like to see any man find fault with me.

Q. What was the occasion of Mr. Czaki's visit to you?

A. As I remember, it was something about his interest as attorney for this judgment creditor of Dutton's.

Q. Isaac Hirsch?

A. I think that was the name; I do not remember. I think so.

1077 Q. What did Mr. Czaki want you to do?

A. He wanted me to make an affidavit in regard to the transaction and his connection with it.

Q. Did you consent to do so?

A. My remembrance is that I declined at the time.

Q. Why did you decline to make an affidavit?

A. I had a personal reason for it.

Q. Are you unwilling to state what your reasons were?

A. I am unwilling to go into those reasons.

Q. Do you refuse to do so?

A. I do.

Q. Did you not subsequently make an affidavit many months afterwards for Mr. Czaki to keep him from being disbarred on the charge of aiding Dutton to dispose of this property, in which you swore that to the best of your knowledge and belief said Czaki was ignorant of the sale of the property when he left Washington on the afternoon of April 13, 1896, in company with the said Stephen A. Dutton?

A. I did make such an affidavit afterwards.

Q. As a matter of fact, instead of pushing Dutton hard, one of his creditors was very accom-odating, Mr. Czaki, as their attorney, consenting to return to New York and wait a week while the loan was being completed.

A. I know nothing about that arrangement.

Q. The haste was all on the part of Dutton, was it not, that he might dispose of his property, with your aid, before his creditors could find out that it was a sale and not a loan?

A. Mr. Czaki was here representing a judgment creditor and urging great haste.

Q. Have you not already testified that he told you that he represented several judgments?

A. I think I have testified that he represented this particular judgment creditor, and probably spoke to me of others.

Q. Yet, was not Mr. Czaki so accommodating as to be content to allow this judgment creditor time to raise a loan instead of taking such proceedings as to have a receiver appointed and the property subjected to the lien of the judgment he represented?

A. I do not know how accommodating he was. He remained here until Monday.

Q. How were you able to aid Dutton to dispose of his property without the knowledge of his creditors or their attorney consistently with your duty to one of those creditors, namely, Horatio N. Twombly, whom you say was also your client?

A. That is between Mr. Twombly and myself.

Q. Were you acting at one and the same time as attorney for

Dutton in aiding him to dispose of his property without the knowledge of his creditors and as attorney for Horatio N. Trombly, as one of those creditors, to collect a $10,000 debt due him from Dutton? If so, how were you able to reconcile the conflicting interests of your two clients?

A. My relations with Mr. Twombly were known to Dutton when he employed me, and my relations to Dutton were known to Mr. Twombly. They were satisfactory to both gentlemen, and that is all there is about that.

1078 Q. Was it not because Mr. Twombly was your client and wanted you to obtain for him from Dutton payment of the whole or part of the $10,000 debt that Dutton owed him that he gave Dutton the letter of introduction to you?

A. I have no means of knowing what moved Mr. Twombly to give Dutton the letter of introduction, but I presume that he thought he was sending me a good client.

Q. Do you deny after Dutton's indictment and arrest for swindling Miss Godfrey out of this property that Czaki saw you in Washington and told you to be very quiet, as Miss Godfrey was trying to recover her property?

A. I do not think Mr. Czaki would ever dare to give me instructions as to my conduct in any matter.

Q. And you deny that, do you?

A. I certainly do.

Q. Do you think it would have been difficult for Mr. Warner or Mr. Wine, if they had made diligent inquiry, to have discovered, if they did not know it already, that Dutton had swindled Twombly, who had given him the letter of introduction to you, out of $10,000 and Isaac Hirsch out of $5,000 and the complainant out of this property, and was then and there, with your aid, pretending to Czaki that he was getting a loan, while, in fact, he was disposing of the property?

Mr. MATTINGLY: Objected to as inadmissible.

A. The question is on an entirely wrong premises, and I have not thought at all about it.

ELLEN S. MUSSEY.

Sworn to and subscribed before me this sixth day of June, 1898.

ROB'T L. MILLER, *Examiner.*

* * * * * * *

1079 THOMAS J. OWEN, a witness produced on behalf of the defendant- Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. MATTINGLY:

Q. About how old are you?

A. I am forty-nine; in my forty-ninth year.

Q. What is your business?

A. I am an auctioneer and appraiser of personal and real property.

Q. How long have you been engaged in that business in this city?

A. About eight years.

Q. In the prosecution of your business have you had occasion to become generally acquainted with the values of real estate in this city?

A. Yes, sir; I think so.

Q. Calling your attention to the property at the northwest corner of New Hampshire avenue and Q street, lots 1, 2, 3, and 66, square 134, what, in your opinion, was the value of that property in April, 1896?

Mr. KEANE: Objected to on the ground that no proper foundation has been laid to qualify this witness as an expert as to the values in real estate in Washington.

A. I should think that property was worth about $4 a foot at that time.

Cross-examination.

By Mr. KEANE:

Q. How long have you been an auctioneer?

A. I have been an auctioneer about eighteen years.

Q. What kind of an auction business do you conduct?

A. At present real-estate auction business.

Q. What kind of a business did you conduct before?

A. During my work in Washington, the eight years I have referred to in answer to Mr. Mattingly's question, I did then a general auction business.

1080 Q. Auction old furniture?

A. Furniture and real estate also.

Q. You have never been a real-estate broker, have you?

A. No, sir; I have not.

Q. So your business now is auctioning real estate wherever you are employed to do it; is that right?

A. That is right.

Q. How do you arrive at your appraisal of $4 a foot for that property?

A. Why, my valuation of that property is based upon, in the first place, the location of that lot.

Q. Is it in any way derived from your knowledge of private sales up in that locality?

A. Not entirely. My knowledge is derived chiefly from both public and private sales; not entirely from private, but from both public and private.

Q. Have you any knowledge of private sales up in that locality?

A. I have knowledge of reported sales in that locality, which I suppose are correct.

Q. At what kind of a sale is this valuation of $4 a foot?

A. My valuation of that property at $4 a foot would be at an auction sale.

Q. Have you examined that property?
A. I have; yes, sir.
Q. Would you call it a very choice piece of property?
A. It is a very good piece of property.
Q. Is it not very beautifully located?
A. The location is very good; yes, sir. The size of the lot and its peculiar shape detracts somewhat from its value, in my opinion, not being, I do not think, so susceptible of subdivision.
Q. It would be more valuable treated as a whole than divided up?
A. I think it would.
Q. Is it not surrounded by very beautiful residences on the other corners?
A. Yes, sir; two of the corners are very well improved.
Q. Which corners are those?
A. Three corners. The other three corners are very well improved. The southeast and southwest corners are very well improved.
Q. Is not the corner on which Mr. Van Wyck's house stands a handsome residence?
A. Yes, sir; that is the northeast corner, I think.
Q. And is not the corner on which the Chinese legation or the Schneider house stands a beautiful residence?
A. Yes, sir; that is very well improved.
Q. And the Clover house; is not that a very handsome and costly house?
A. I am not so familiar with that. I do not really recollect. That has escaped my memory just now.
Q. And the Whittemore house; is not that very costly and handsome?
A. The house situated on this lot?
Q. No; right opposite.
A. I am not certain about that.
Q. How long has it been since you have been up there to examine that corner, the northwest corner of New Hampshire avenue and Q street?
A. I passed along there a few days ago on my way to sales, but I went there, I expect, about three weeks ago.
Q. To examine that corner with a view of giving your testimony here?
A. Yes, sir.
1081 Q. And you do not now really recollect, do you, either the Whittemore mansion or the Clover mansion?
A. I do not know that I know them by the names designated.
Q. Please look at them on the plat.
A. (After examining plat.) I recollect the southeast and the southwest corners are very well improved.
Q. And you really do not recollect either——
A. (Interposing.) The northeast corner is well improved, I think. I am not so positive about that, really.
Q. And, although you went there to examine that property spe-

cially, you are really unable to recollect whether those four corners are or are not improved by beautiful residences?

A. Well, now, I did not go there specially to value this property with a view to giving any testimony in any case, because I did not know of any case at that time.

Q. Why did you go there?

A. I went there at the request of Mr. Warner, but I knew nothing of any case at all pending.

Q. But you went to appraise the property?

A. Yes, sir.

Q. And, in appraising the property, do you not naturally look at the surroundings of the property?

A. Yes, sir; I would be governed by that.

Q. Yet you are unable to state whether or not those four corners are improved by beautiful residences?

A. I said my recollection is not as distinct about the northeast corner as about the two corners—the southeast and southwest.

Q. You only recollect two corners?

A. Distinctly, now, in my mind; yes, sir.

Q. How much front has this northwest corner, including both streets?

A. I think about 65 feet on Q street and 45 feet—something like that—on New Hampshire avenue.

Q. Do you know how many square feet it contains?

A. Between 63 and 64 hundred. I do not exactly remember the number of feet it contains.

Q. You say you are familiar with private sales that have been had up in that locality?

A. I do not know that I said I was familiar with them, but I have heard of some private sales made there.

Q. Did you hear of the sale of the northwest corner of New Hampshire avenue and R street?

A. Is that the Page property?

Q. Yes.

A. I think I did.

Q. Do you know when that was sold?

A. I do not think I can give you the exact date. I think it has been within two or three years.

Q. Did you not know that Mr. Page's house is surrounded by vacant corners, nothing being built on the corners surrounding it?

A. I know it is not surrounded by improvements altogether.

Q. The triangle in front of it is entirely vacant, is it not?

A. I think it is. I think that triangle is vacant.

Q. Do you not know that all the corners that surround the Page property are vacant?

A. I do not know. I cannot say positively. I did not go there.

1082 Q. Do you consider that improvements such as elegant residences of the character of the Clover house, the Schneider house or Chinese legation, and the Van Wyck house enhance the

value of the property and render it more valuable than if the lots were vacant?

A. That would depend upon some circumstances, I think.

Q. You really, then, have doubt as to whether valuable and handsome residences improve property?

A. I think anybody will be willing to admit it will improve it under some circumstances.

Q. You really do think that it would improve it some?

A. I think it would improve it under some conditions.

Q. Other people would think it would rather deteriorate the property by having handsome residences around there, would they?

A. I don't know what other people would think.

Q. But you yourself have doubt as to whether valuable improvements would enhance the value?

A. I did not say that at all.

Q. What is your opinion?

A. My opinion is that under some conditions it would improve the value of a vacant piece of ground surrounded by nice improvements—good residences.

Q. Can you conceive of any condition where a given corner would—be enhanced in value by having the other corners surrounding it improved by costly and elegant residences? If so, please state what case you refer to.

A. Take this very piece of ground; we will call it a vacant lot that we are now testifying about. My valuation of that lot was placed upon that particular lot from the fact partially of its surroundings. I have no doubt that that lot we speak of might be enhanced in value by its surroundings. If there are no surroundings as they are around that lot I should never have appraised it at $4 a foot.

Q. You have not yet answered my question. If you can think of any case where handsome and costly residences would not enhance the value of land I would like you to mention it.

A. I have not any in mind at this time.

Q. Do you think that the proximity to Dupont circle also is calculated to make the property more valuable than if it was further remote from the circle?

Q. I would rather have property close to Dupont circle than further away; yes, sir; I think it would be.

Q. Do you think for those reasons that that northwest corner of New Hampshire avenue and Q street would be more valuable than the property at the corner of New Hampshire avenue and R street, foot for foot, the same area?

A. I would not think so.

Q. I suppose you think the property at the northwest corner of New Hampshire avenue and R street would be more valuable than the property at the northwest corner of New Hampshire avenue and Q?

A. I do not think I would.

Q. You do not think there would be any preference at all between them, do you?

A. I do not know that I am prepared intelligently to answer that question, because I have not recently examined the location of Eighteenth and R.

Q. I said New Hampshire avenue and R street.

A. I mean New Hampshire avenue and R street.

1083 Q. What did that property at the northwest corner of New Hampshire avenue and R street sell for, do you know?

A. I have no personal knowledge. The sale has been reported at $6 a foot, I think.

Q. It has been testified in this case by the broker who made the sale that it was sold for over $6 a foot. Do you know when that sale was?

A. I think that has been within two or three years. I do not exactly know the time. I am not positive about that question.

Q. Do you know the Church of the Holy Cross property?

A. I am not so familiar with that; no, sir. I do not know that I am familiar enough to testify about that.

Q. Do you know where it is?

A. Yes, sir.

Q. It is only one block, is it not, from this northwest corner of New Hampshire avenue and Q street?

A. I think so.

Q. When was the last sale of that Church of the Holy Cross property?

A. I do not know when that was made.

Q. Do you know who bought it?

A. No, sir; I do not.

Q. Do you know the price at which it sold per square foot?

A. I do not know that, sir. I heard it sold for $8 a square foot, but I have no knowledge of it.

Q. Who told you that?

A. I cannot state that. Very frequently we hear the prices of a great many pieces of property that we cannot recollect who stated them.

Q. Do you know when the last sale was of the Hooe triangle at Eighteenth and R street and New Hampshire avenue?

A. That is the lot we are now speaking of; the lot in question, is it not?

Q. No; the lot we are talking about in this case is at the northwest corner of New Hampshire avenue and Q.

Question repeated.

A. I do not.

Q. Do you know whether it was sold at public or private sale?

A. I do not.

Q. Do you know at what price it sold per square foot?

A. No, sir.

Q. Do you think, if you were familiar with the sales of property in that locality, that you would know more about the sales that we have just mentioned than you seem to do?

A. If I was familiar with the sales made in that locality I would

be more familiar with the value of this property. That is what I mean.

Question again repeated.

Mr. KEANE: Do you understand my question?

A. Yes, sir; I think I do now. I should say so.

Q. You are not particularly familiar, are you, and do not profess to be, with sales other than auction sales of real estate?

A. I am not as familiar with other sales as I am with the sales made by auction; no, sir.

Q. Do you do an auction business in real estate for any of the Washington firms here—any of the Washington real-estate firms?

A. Yes, sir.

1084 Q. Will you mention some of the firms for whom you have acted?

A. My extensive patrons are Armes & Drury. I make more sales for them than for any one set of men; for the Washington Loan & Trust Company; for the Equitable Building Association; quite a number of different people.

Q. What private firms have you besides Armes & Drury that you can recall?

A. I have sold for Mr. Darlington and Mr. Sidney Webb.

Q. Mr. J. J. Darlington, the lawyer?

A. I made one sale only for Mr. Darlington. This time he was trustee with Mr. Sidney Webb; Davidson & Davidson. Sometimes we make a sale for one party and it is a long time before we make a sale for the same party. I have made a good many sales for real-estate men in Washington and attorneys.

Q. Do you know any of the firm of B. H. Warner?

A. I know them, and that is about all. I have known Mr. Warner for several years.

Q. In what way have you known Mr. Warner?

A. Simply seeing him; not in any business transactions, but socially; that is all.

Q. Did you come here to oblige Mr. Warner, at his request, or were you subpœnaed to attend?

A. No, sir; I was not subpœnaed; I came here at Mr. Warner's request.

THOS. J. OWEN.

Sworn to and subscribed before me this 6th day of June, A. D. 1898.

ROB'T L. MILLER,
Examiner in Chancery.

LOUIS D. WINE, a witness produced for and on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. MATTINGLY:

Q. How long have you resided in this city?

A. Thirty-five years.

Q. You are a member of the firm of B. H. Warner & Company and one of the defendants in this suit?

A. I am.

Q. How long have you been connected with that firm?

A. A little over ten years.

Q. Please state the circumstances in the order in which they occurred of your purchase of the property in question in this suit, and all that transpired.

A. About half past ten o'clock on the morning of the 10th of April, 1896, Mrs. Ellen S. Mussey came in our place and offered for sale lots 1, 2, 3, and 66 of square 134 for the sum of $25,000, agreeing if sale were made that a commission of 3 per cent. would be allowed, one-third of which she would want for herself. She also stated that $7,500 cash would be required and an assumption of $17,500 trust. I took the matter under consider-
1085 ation until about two o'clock in the day, trying to think of some one who might be a possible purchaser for the property. I could not think of any one, and about that time in the day I determined to buy the property myself. In the meantime I had talked with Mr. Swartzell and Mr. Warner about it, and Mr. Swartzell had promised to go in partnership with me to buy it in the event Mr. Warner did not. I had not talked with him about it until that time. At 2 o'clock my nephew, Louis Wine Richardson, was in the office, and I drew up a contract for the purchase of the property, which I believe is on file here, acknowled-ing receipt of $500 from Mr. Richardson as a deposit on this property, setting forth in the contract how it was to be settled. Louis Richardson signed this contract, which was witnessed by Mr. C. B. Rheem. I either took or sent that contract to Mrs. Mussey; I do not remember which now. At any rate, I left it with her. About 4 o'clock in the afternoon Mrs. Mussey sent the contract back to me just as I had made it out, with one exception; that exception was that the 15 days allowed for settlement had been erased and five days inserted. I then went over to see Mrs. Mussey and asked her why the haste. Then it was that she told me that the party who owned the property had a judgment or judgments, I do not remember which, against him in New York, which if not settled would give him some trouble, and then we agreed if it were possible to get the abstract made within five days that I would settle for it in five days. I came back to the office, and Mr. Warner was out of the office that afternoon. I did not see him until 5 o'clock. At 5 o'clock I told him what I had done and asked him if he would not join me in the partnership and told him if he did not go in I had secured Mr. Swartzell as a partner, as I could not manage it all myself. Then and there he agreed that he would take a half interest in the property. The next day, I think, being Saturday, the 11th, Mrs. Mussey sent me two abstracts of the title, one, I think, made by the Columbia and one by the Real Estate Title Insurance Company. I turned both of those abstracts over to the Columbia Title Insurance Company and with, I think, the contract of sale, and asked him as soon as the title came all right that he should make a deed to Louis in accordance with that contract.

I heard nothing more from the transaction until the next Monday morning, perhaps about 10 o'clock—half past 10 o'clock, maybe—when I was called to the telephone by Mr. Edmonston, the president of the Columbia Title Insurance Company, who said in substance about this: That Mr. Dutton, who owned this property and who had signed the contract, declined to make a deed for the property unless I would assume the accumulated interest and taxes on the property. I told him I would not do that at all; that he might consider the contract off if he made that demand, and Mr. Edmonston then insisted that I had better come over to his office, which I did immediately, and when I arrived there I found Mrs. Mussey, Mr.
1086 Dutton, and Mrs. Dutton, to whom I was introduced by Mrs. Mussey. He and I had quite a little chat there about this accumulated interest and taxes, and finally I got a little cross and told him unless he settled that way there would be no settlement at all, and I left the office, giving Mr. Edmonston that information—that unless Dutton allowed the accumulated interest and taxes in the settlement there would be no deal with him. Later in the day I learned that the transaction had been consummated as originally intended by the contract. I never had seen Dutton before nor have I seen him since, neither had I ever heard of him before nor did I know from whom we were purchasing the property, as may be shown by the contract that I drew. I left the party of the first part blank to be inserted, which I believe is still in blank. Mrs. Mussey failed to put the name of the party of the first part in the agreement. That is about all there is to it. Perhaps the same day I went up to the ground and looked it over, and I think I found the sign of Mr. Robertson there, for rent or for sale, I do not know which, on this property, and it occurred to me he might know where the keys of the house were, and he remarked that he thought that property had been sold; that Mrs. Godfrey had sent to him for the keys. I then wrote to Mrs. Godfrey, telling her a client of ours had purchased the property. I might have used a different word than client. I merely wanted to inform Mrs. Godfrey that the property had been sold in which I was interested, and the keys came back to me by return mail; then I thought there was no trouble about it. That is as near the story as I can give it to you, and is the truth, and I believe the whole truth.

Q. The only time you saw Stephen A. Dutton was on the occasion referred to in the office of the Columbia Title Insurance Company?

A. That is the only time, and I presume only then for about ten minutes.

Q. Did Dutton at that time claim to know Mr. Warner?

A. Mr. Warner's name was not mentioned at all.

Q. Did you state to Mr. Warner when you spoke to him about taking a half interest in the property who was selling—who the owner was?

Mr. KEANE: Objected to as leading.

A. I do not think I did. I do not think Mr. Warner saw the con-

tract until the next day, because it was 5 o'clock and we were just going home.

Q. The contract did not disclose the name of the vendor or seller?

A. Yes; it did; Stephen A. Dutton.

Q. That was the executed contract; the contract before it was executed?

A. Before it was executed; no; I had no idea; neither had he that I know of.

Q. You say the executed contract Mr. Warner did not see until the next day?

A. I think not until the next day.

Q. Something has been said in this case about this property being upon the books of B. H. Warner & Company for sale?

A. Yes, sir.

1087 Q. Just state what you knew at the time, if anything.

A. I did not remember at that time that it was on our books. I remembered later that Mrs. Godfrey did come in there and put it on our books, and I think Miss Godfrey was along, and I said to Mrs. Godfrey that the property was entirely too high. I did not think we would succeed in selling it, and while on our books I paid little or no attention to it on that account, because it was too high; at least in my judgment, and it was very hard to sell property then at very low prices.

Q. What was your object in purchasing this property?

Mr. KEANE: Objected to as incompetent.

A. My idea was to make a little money on it; I thought it might be possible to make $5,000 on it.

Q. In other words, you bought the property, as I understand, with a view of selling it again?

A. Yes, sir; with a view of speculating on it; selling it again; yes, sir; and, as I said, I thought I might make $5,000 on it, not believing it was material to Mrs. Godfrey in any way, because I knew the property had been sold.

Cross-examination.

By Mr. KEANE:

Q. I hand you an affidavit marked Exhibit 1, April 12, 1898, H. J. G., which has been offered in evidence in this case, the affidavit being entitled—

"Supreme Court, New York County.

ISAAC HIRSCH
vs.
STEPHEN A. DUTTON, CORA M. DUTTON, and HARVEY M. MUNSELL,"

and I ask you whether that is your signature to that affidavit?

A. (After examining same.) Yes, sir.

Q. I read the affidavit to you as follows:

(NOTE.—There is, apparently, a mistake in the original, the affidavit here inserted by the examiner having been sworn to June 1st, 1898, while that referred to by question and answer of the witness was dated May 12, 1898, which latter will be found on page 533 of this record.)

DISTRICT OF COLUMBIA, *ss:*

Louis D. Wine, being duly sworn, deposes and says that he is a member of the firm of B. H. Warner & Company, real-estate brokers in said District; that on or about the 10th day of April, 1896, one Ellen Spencer Mussey, an attorney and counsellor at law in said District, called upon this deponent at his office, No. 916 F street, in said District, requesting said deponent to negotiate for one Stephen A. Dutton, for whom Ellen Spencer Mussey was acting attor-
1088 ney, the sale of certain premises situate in the city of Washington, District of Columbia, and more particularly known as lots 1, 2, 3, and 66, in block 134, on the land map of the city of Washington.

That at the said time Ellen Spencer Mussey represented to this deponent that the said Stephen A. Dutton was anxious to negotiate a speedy sale of the above-described premises and requested this deponent, in view of that fact, to use his endeavors to accomplish that object, and upon deponent's request to know the purchase price of said premises was informed by said Ellen Spencer Mussey that the said premises could be purchased for the sum of $25,000, less commission.

That thereafter and on said day this deponent did prepare a contract of sale thereof and acknowledged the receipt of a deposit by B. H. Warner & Co., agents, of the sum of $500 on account of the said purchase price; that the said contract of sale was duly signed by the said Stephen A. Dutton and the closing of said contract was adjourned to the thirteenth day of April, 1896, for the purpose of giving sufficient time to the purchaser to have the title of said premises searched, as was done by the Columbia Title Insurance Company.

That thereafter and on or about the thirteenth day of April, 1896, in accordance with the contract of sale hereinbefore referred to, the said premises were duly sold and conveyed by the said Stephen A. Dutton to Louis W. Richardson as grantee, said sale being an absolute one, and the consideration paid for the above-described premises being the sum of $25,000; that deponent represented the said purchaser in all the negotiations hereinbefore referred to; that the said premises were sold subject to three separate trusts, amounting in the aggregate to the sum of $17,500, and subsequent to accrued interest on the said trusts to the sum of $339.34; that in addition thereto the said Stephen A. Dutton was required to pay the *pro rata* share of taxes accrued on the said premises to the day of purchase, amounting to the sum of $74.33; that this deponent, for the purchaser herein, advanced the Columbia Title Insurance Company, who represented the said purchaser and who searched the said title, the sum of $7,086.33, representing the equity of the said Stephen

A. Dutton in said premises, after deducting the above-mentioned sums representing the encumbrances on the said property at the day of purchase.

That on the thirteenth day of April, 1896, this deponent was present for a short time previous to the closing of the title at the office of the Columbia Title Insurance Company, at which day the title of the premises hereinbefore mentioned was duly transferred by the said Stephen A. Dutton to the said Louis W. Richardson; that, besides this deponent, there were present Mr. Edmonston, representing the Columbia Title Insurance Company; Stephen A. Dutton, Cora M. Dutton, his wife, and Ellen Spencer Mussey, the attorney for Stephen A. Dutton; that Frederick M. Czaki was not present at any of the negotiations or transactions had in
1089 reference to the transfer of the said title, and this deponent emphatically avers that at none of the times hereinbefore mentioned did he know of the existence of any such person as the said Czaki; neither did the said Stephen A. Dutton represent to this deponent that Czaki was his attorney or in any way connected with the said Dutton in reference to this transaction, but, on the contrary, that the said Dutton did represent to this deponent that the said Ellen Spencer Mussey was his attorney, and that he recognized her acts as such.

This deponent has seen and there has been exhibited to this deponent certain charges addressed to the grievance committee of the Bar Association of the City of New York, signed by one David Keane. Deponent emphatically avers that in so far as he has knowledge the said charges in any — refer to, insinuate, or presume actual knowledge of the details of the transactions as it actually occurred, or in any way charge complicity therewith on the part of Frederick M. Czaki, are wholly untrue and false.

(Signed) LOUIS D. WINE.

Subscribed and sworn to before me this first day of June, A. D. 1897.

HENRY J. GROSS,
[SEAL.] *Notary Public.*

—. Did you swear to the affidavit I have just read to you?

A. Yes, sir.

Q. You swore to that, did you not, on the 12th day of May, 1896, before Henry J. Gross, notary public?

A. I swore to it before Mr. Gross on that day.

Q. At the time you swore to that affidavit, you knew that you had purchased that property for yourself, and Richardson was only a dummy?

A. Mr. Richardson had the record title to the property.

Q. At the time you swore to that affidavit, you knew the truth to be, did you not, that you had purchased said property for yourself, and Richardson was only a dummy in whose name you had taken the title?

A. Yes, sir.

Q. Why did you represent yourself in said affidavit as having secured a purchaser for said property when in fact you were the purchaser yourself?

A. I did that for convenience sake.

Q. Why did you say that deponent, meaning yourself, represented the said purchaser in all the negotiations, as if you were not the purchaser, but only a broker acting as such for some third person?

A. Mr. Richardson had the record title to the property.

Q. Why did you say that deponent, meaning yourself, represented the said purchaser in all of the negotiations as if you were not the purchaser, but only a broker, acting as such for some third person?

A. I had no motive at all except for convenience sake, not believing there was any materiality to Mrs. Godfrey at all, because I knew she did not own the property.

Q. Why did you conceal so studiously in that affidavit
1090 your connection with the transaction as the purchaser of said property, holding out your dummy all the time as the client whom you were representing?

A. I had no motive to deceive anybody. I told several parties I was the purchaser of the property the next day. Your own witness swore to it on the stand. I told him before I had title. I mean by "your own witness" John B. Wight.

Q. Was not said affidavit of May 12, 1896, made by you at the request of Frederick M. Czaki?

A. It was.

Q. Did not Mr. Czaki explain to you, when he requested you to make that affidavit, that Stephen A. Dutton claimed that the transaction of April 13, 1898, in regard to this property was a loan and not a sale, and that he wanted your affidavit to prove it was a sale?

A. Mr. Czaki represented to me that Mr. Dutton had sworn on the witness stand in New York that he had made a loan and it was not a sale, and Mr. Czaki also represented that this man had acted a scoundrel in New York and they wanted him punished for it, and if we would help punish him.

Q. Then your answer is false, is it not, that you made to the seventh additional interrogatory here, namely, that you never heard until Dutton's trial that Dutton claimed it was a loan and not a sale that he had made on April 13, 1896? I allude to the seventh additional interrogatory in the bill of discovery.

A. Read that.

Q. The seventh additional interrogatory:

"Is it not a fact that Dutton has always maintained that the said transaction was simply a loan in the form of a sale to protect him *him* against his judgment creditors and the plaintiff, whom he swindled?"

Answer of Louis D. Wine to the seventh additional interrogatory:

"Mr. Dutton never claimed to me, or within my knowledge, that the transaction was a loan. I first heard that suggested after his

trial in New York, being told at the trial that he asserted he had negotiated a loan and not a sale."

A. That was after the trial; it was after he divulged the fact on the witness stand; it was after the trial, and he had divulged the fact on the witness stand, I am sure. That is what I testified to here.

Q. Have you not just sworn that when Frederick M. Czaki requested you to make this affidavit that has just been read and sworn to by you on the 12th day of May, 1896, that he informed you that Stephen A. Dutton claimed that the transaction of the 13th of April, 1896, in regard to this property was a loan and not a sale?

A. Yes.

Q. I ask you, therefore, whether your answer, which I have just read, to the seventh additional interrogatory is not false?

A. The information that I gave you there I received from the same sources that I received——

Q. Did you not swear in your answer to the seventh additional interrogatory that the first time you heard that Dutton claimed that transaction of April 13, 1896, was a loan and not a sale
1091 was not until after his trial in New York, being told that at the trial he asserted he had negotiated a loan and not a sale?

A. Mr. Czaki told me he made that statement on the witness stand.

Q. Answer my question.

A. That is answering your question.

Q. If it is true, what you now say, that Mr. Czaki informed you on the 12th day of May, 1896, at the time of getting this affidavit from you, that Dutton claimed that that transaction in regard to this property of April 13, 1896, was a loan and not a sale, it is not true, is it, that you heard for the first time that Dutton claimed that that was a loan and not a sale only after his trial in New York, when he asserted on the witness stand that it was a loan and not a sale?

A. Both statements are based upon representations made to me by Mr. Czaki.

Q. Was not Dutton's trial in New York in December, 1896?

A. I don't know.

Q. Do you not know that Dutton's trial did not take place until many months after the twelfth day of May, 1896?

A. I do not.

Q. Do you mean you did not hear of the trial of Stephen A. Dutton?

A. I made no dates or notes of the time.

Q. Do you mean you did not hear of the trial of Stephen A. Dutton?

A. I did not hear of it at all, do you mean?

Q. Will you answer my question?

A. I did.

Q. And you heard of Dutton's trial at the time it took place, did you not?

A. I must have known it. I sent a man over there to be a witness.

Q. You did know of it at the time it took place?

A. Yes, sir.

Q. And you know, do you not, that that was several months after the 12th day of May, 1896?

A. I kept no account of dates at all.

Q. You say you sent some one over at that time?

A. I sent the papers all over at the time by Mr. Dodge, at the request of Mr. Czaki. Mr. Czaki stated that the object of this affidavit of mine was to prove perjury on Dutton.

Q. Do you not know that the trial of Dutton had not yet taken place when Mr. Czaki obtained that affidavit from you?

A. I do not. I do not know whether it was this trial that you refer to, but he gave testimony there, according to Mr. Czaki's representations, whether it was this trial or another trial; but Mr. Czaki told me that he had represented there on the witness stand and sworn that it was not a sale, but it was a loan. I do not know what trial it was, but that is what Mr. Czaki represented to me.

Q. Now, surely, if you sent papers over at the trial of Stephen A. Dutton you must have some recollection about how long it was after you had sworn to that affidavit in May that you sent those papers over?

A. I am positive of this: That Mr. Czaki represented to me——

Q. Will you answer my question?

Mr. MATTINGLY: Answer it in your own way.

1092 A. I am positive that Mr. Czaki stated to me that Dutton had made an affidavit on the witness stand that this was not a sale, but a loan. Whether it was in the Godfrey trial or some other trial previous to that, I do not know. He said he wanted the affidavit for the purpose of proving that Dutton was a perjurer.

Q. Do you mean to say that at the time that Stephen A. Dutton was tried for having defrauded Miss Godfrey of this property that you sent papers on at that trial, to be used there in evidence, and that you are unable to recollect whether that was not several months after you had given this affidavit of May 12, 1896?

A. I have answered that question. I told you most positively that I made that affidavit on representations made to me by Mr. Czaki.

Q. That is not an answer to my question; that was not my question.

A. I know that is not your question, but it answers it just as I answered it before. I made the affidavit——

Q. (Interposing.) I want my question answered.

A. I do not remember.

Q. You have given a very long statement on your direct examination, going into the details of conversation and acts that took place on the 10th of April, 1896. Why is it that your recollection appears to be so good about those facts and acts and conversations,

and yet so weak when you come to be asked as to what took place subsequently to that time and of more recent date?

A. In both cases I have told the truth.

Q. If Dutton's trial for defrauding Miss Godfrey, to which you sent those papers, did not occur until some time in November or December, 1896, and if you have sworn in your answer to the seventh additional interrogatory that you did not hear that Dutton had ever claimed that the transaction in regard to this property of April 12, 1896, was a loan and not a sale until after that trial had taken place, then you admit, do you not, that the testimony which you have just given here, that Czaki informed you on the 12th day of May, 1896, when he got that affidavit from you, that Dutton claimed that the transaction in regard to this property of April 13, 1896, was a loan and not a sale, makes you out to have sworn falsely on either one of those two occasions?

A. If you would make that question twice as long as it is, I would still swear that Mr. Czaki told me previous to the 12th of May that Dutton had sworn on the witness stand that it was a loan and not a sale.

Q. And therefore you admit, do you not, that your answer which I have just read to you to the seventh additional interrogatory is false?

Mr. MATTINGLY: Objected to, as the witness has already answered the question about half a dozen times.

The WITNESS: As I said before, if you were to make that question twice as long and twice as impressive, I should still swear that previous to the 12th day of May Mr. Czaki told me that Dut-
1093 ton had sworn on the witness stand that it was a loan and not a sale. I do not know whether it was Dutton's trial or whether it was the Dutton and Godfrey trial, but it was on the witness stand that he had sworn to that, and he wanted to prove perjury on him.

Q. Therefore, as that was in May, and the trial of Dutton for defrauding this complainant to which you sent the papers, to which you referred, did not take place until fall, you admit, do you not, that either one or the other of your statements is false?

Mr. MATTINGLY: Objected to for the same reason.

A. It is not false.

Q. I read you the following letter, which the complainant offered in evidence, being marked Complainant's Exhibit No. 6, April 9, 1898, F. W. Z.:

"APRIL 17, 1896.

Dictated by L. D. W.

Mrs. Mary A. Godfrey, 287 West Seventieth street, New York city, N. Y.

DEAR MADAM: A client of ours has recently purchased premises known as 1801 Q street northwest, this city, from Mr. Dutton. We called on General Robertson, who has charge of the property, for the

keys this morning, and he informed us that he had at your request returned the same to you. We would be obliged if you would send the same to us by express or mail at our expense.

Very truly yours, B. H. WARNER & COMPANY."

When you wrote that letter, what was your motive in concealing that you and Mr. Warner were the purchasers and in representing that the property had been purchased by a client, as if you had been only the brokers in the transaction?

A. There was no motive at all. I believe I told a dozen people that we bought it. We merely wanted the keys. If she had not sent the keys——

Q. Why did you conceal from Mrs. Mussey at the time of the purchase of said property in April, 1896, your true connection with the said transaction as purchaser and hold yourself out as the broker or representative of the dummy in whose name you took title to the property, taking two-thirds of the commissions for selling the property to yourself?

A. No motive at all, except as a matter of convenience to ourselves.

Q. When did you first learn of the commencement of this action against Louis W. Richardson?

A. As to the exact date, I cannot say.

Q. About when was it?

A. I really could not give you a date which would help you any.

Q. What month was it?

A. I could not give you a date that would help you any.

Q. How soon was it after the action was commenced?

A. I could not really tell you. You have the data, have you not? I paid no attention to dates whatever in that particular.

1094 Q. What time of the year was it?

A. I really could not tell you.

Q. How is it that your memory is so good about the transaction of April, 1896, and seems to be so poor about other matters?

A. I suppose because that date is more material to me.

Q. How did you first hear of the commencement of this suit?

A. I think from Mr. Richardson or Mr. Thomas. I think the first real intimation I had of the possibility of the suit in the premises was an article that appeared in the Washington Post, calling Louis a real-estate bunco-steerer. That went on to refer to the matter rather unpleasantly. I think that was the first I ever heard of it at all.

Q. Louis who?

A. Louis W. Richardson.

Q. And so you really cannot remember, can you, how you first learned of the commencement of this suit?

A. I have answered that question. I thought I either heard from Louis or Mr. E. H. Thomas.

Q. But your memory is quite uncertain about it?

A. Yes.

Q. You would not be positive at all?

A. I answered the question.

Question repeated.

A. I have answered the question.

Q. What makes you think you may have heard it from Louis W. Richardson?

A. I answered the question. Men do not always know what makes them think.

Q. Well, what was your first conversation with Mr. Richardson on the subject?

A. I do not remember, except to turn him over to his attorney.

Q. And you cannot remember anything that he said to you or you said to him on that occasion, except that you turned him over to Mr. Thomas; is that so?

A. That is what I said.

Q. Has your memory always been weak, Mr. Wine?

A. I will leave you to judge of that. You have not known me a great while.

Q. What did you say to him when you turned him over to Mr. Thomas?

A. I don't remember. I suppose I turned him over to Mr. Thomas.

Q. You cannot remember what you said?

A. Perhaps with instructions to formulate an answer to the charges, whatever they were.

Q. Where did you hold your interview with Mr. Richardson, to which you refer?

A. I do not remember that.

Q. Who were present?

A. I do not remember that.

Q. Had you already seen Mr. Thomas before you turned Mr. Richardson over to him?

A. I do not remember.

Q. Do you know any reason why you should be so forgetful about these things?

A. No; I do not.

Q. I read you the following testimony given by Mr. Richardson when he was on the stand:

"Q. When did you first learn that Mr. Thomas was engaged to defend this suit?

"A. I do not remember when.

1095 "Q. From whom did you first learn that?

"A. From Mr. Wine."

Q. Is that testimony true or false?

A. I imagine it is true; Louis swore to it.

Q. Does it aid you at all in refreshing your recollection about the fact?

A. Not a particle.

Q. Can you not recall what you stated to Mr. Richardson when you told him that Mr. Thomas was engaged to defend this suit in which he was the defendant?

A. I do not recall what I said to him. I think I merely turned Louis over to Mr. Thomas to put him in the hands of Mr. Thomas

to be dealt with as Mr. Thomas, his attorney, deemed prudent in the premises.

Q. And you are obliged to state that from your fancy, rather than from your memory, are you?

A. I might state it from either.

Q. Then, if you state it from your memory, you recollect it to be the fact?

A. I told you I did not recollect what I said to him.

Q. How, then, could you state it from your memory if you have no recollection of it? Please explain what you mean.

A. I told you I had no recollection of what I said to him.

Q. Do you recollect what was the occasion of your having the conversation with Louis Richardson on the subject of the suit at all?

A. I do not.

Q. Now, do you not remember that Mr. Richardson went to you at once, as soon as the suit was commenced against him, and showed you the original bill of complaint?

A. He may have done so. If he did, I turned him over to his attorney.

Q. When did you read the original bill of complaint?

A. I have no memorandum of the date at all.

Q. Do you deny you ever read the original bill of complaint?

A. I do not deny it; yet I do not remember it.

Q. Have you ever consulted any specialist about your memory?

A. No. I was thinking about consulting you.

Q. Did you ever find out why Mr. Richardson was sued?

A. Did I ever find out why Mr. Richardson was sued?

Q. Did you ever find out what the suit was about—what the subject was; what the allegations were in the bill of complaint; did you ever find that out?

A. If you will allow me to answer, I will——

Q. (Interposing.) I simply ask you if you ever found that out.

Q. Do you want an answer to that?

A. I would like you to answer yes or no.

A. Yes; I think so.

Q. You did find it out?

A. Yes, sir.

Q. Now state from whom you found it out and how you found it out.

A. I do not remember. I suppose I found out the way he was sued from him, as I have stated half a dozen times.

Q. My question was very different from that. If you want it re-read the examiner will do it. Please read it.

The last question was read to the witness.

Mr. KEANE: The question having been re-read and your attention called to the fact that I asked you——

1096 A. (Interposing.) Let me hear the question, please.

Q. The question having been re-read and your attention called to the fact that I asked you when you had found out what

the suit was about, what the allegations were, will you kindly answer me?

A. I told you two or three times that I did not remember the time that I heard Mr. Richardson was sued——

Q. (Interposing.) From whom did you hear what the allegations and substance of the suit were?

A. I cannot remember. I answered that I heard that presumably from Louis. You asked me if he showed me what is called in law a subpœna or notice of it. I told you he did, and I turned him over to his lawyer. That is the way I intended to answer.

Q. I understood you to say that at some time you did find out what the allegations and substance of this suit were against Richardson. Can you not tell me from whom you found that out?

A. I answered that question. I told you I thought from Louis, after notice had been served on him. I think I told you that; and I told you, further, that I turned him over to his attorney.

Q. You learned, then, that it was a suit against Richardson to have the conveyance set aside, made by Stephen A. Dutton, as grantor to him as grantee, on the 13th of April, 1896. Is that so?

A. Yes.

Q. And you also learned, did you not, that neither you nor B. H. Warner were parties defendant?

A. Yes.

Q. As Mr. Richardson was merely a dummy, in whose name you had taken the deed, and as you were the real party in interest, did you not regard it as a matter which concerned you to defend the suit?

A. I did.

Q. You understood, did you not, that a judgment for the complainant in that suit would have the effect of restoring to her the title to the property and of depriving you of any further interest in it?

A. Whom do you mean by her?

Question repeated.

A. I do not think I understand that. Do you mean——

Q. Did you understand that that suit was brought for the purpose of having the conveyance from Dutton to Richardson set aside?

A. Yes, sir.

Question again repeated.

A. You mean to assert that a judgment against the party conveying a piece of property would invalidate the title? Is that what you want me to say, whether I know that is a fact? I am not obstinate about it, but I want to get at it clearly, that is all.

Q. If you want me to explain that outside of the record I will. Please read the question.

Question again repeated.

A. I have no objection——

Q. (Interposing.) What I want to know is whether or not you understood what the effect of a judgment in favor of the com-

plainant in that suit would have had upon the title to the property?

1097 A. With the light that is before me, I must say I have no such knowledge.

Q. You did not understand that was a suit for the complainant to recover this property, did you?

A. I thought that was the intention.

Q. That is what you thought was the intention. Then did you not know that a judgment of the court in her favor would have had the effect of restoring the property to her? If not, what effect did you think the judgment of the court in her favor would have?

A. You mean in this suit against Louis; is that what you mean—against Louis Richardson?

Q. You can either say that you know or do not know. I make my questions as plainly as I know how, and if you cannot comprehend them please say so.

A. I have tried to tell you that I did not comprehend it in as kindly a spirit as a man could, and I told you a while ago I did not want to be obstinate.

Question repeated.

A. I suppose if she won the suit of course the property would be restored to her. There is no other conclusion, I think, than that.

Q. Therefore did you not regard it as important to you that she should not win the suit, you being the real party in interest and Richardson only being a dummy?

A. Yes.

Q. You did?

A. Yes.

Q. Did you regard it of sufficient importance to you to make it worth your while to take any steps to see she should not win the suit?

A. I advised the turning of the whole thing over to our attorney, in whom we had confidence.

Q. You say you advised. Whom did you advise?

A. I advised Louis Richardson to turn that paper that he received—I do not know what it was, whether it is called a summons or a bill of complaint—over to our attorney.

Q. If you regarded it as important to your interests to prevent the complainant from obtaining judgment recovering title to the property in that suit, will you not please state fully all you did to protect your interests; everything you can remember?

A. I simply turned the matter over to our attorney, in whom I had confidence. As to the details, I do not remember. If you had——

Q. (Interposing.) How did you turn it over; what did you do?

A. I think I have answered that two or three times. I turned it over to Mr. E. H. Thomas, who was Louis' attorney.

Q. Will you state in what way you turned it over to Mr. Thomas?

A. I would not know how to state it in any other way.

Q. Did you do it personally?

A. I think so. Do you want to know whether Mr. Warner and

I did it together? I want to tell you that Mr. Warner took very little interest in this case until the latter days of it. Mr. Thomas and I were trying to run it alone with Louis.

Q. So you and Mr. Thomas were trying to run it alone?

A. Yes, sir; with Louis.

1098 Q. I will read you the following extract from the testimony of Louis W. Richardson in this case:

"Is it not a fact that B. H. Warner and your uncle, Wine, being the purchasers and real parties in interest, were defending the suit in your name?

A. Yes."

Was that testimony of Mr. Richardson's true or false?

A. I just made answer to a question similar a while ago. You asked me whether I felt it my interest to take care of the suit, and I told you yes.

Q. Mr. Richardson's testimony, then, that you were defending the suit in his name is true, or is it false—which?

A. According to the record, it is true.

Q. Why did you prefer to defend that suit in the name of your dummy and nephew, Richardson, rather than reveal your own connection as the real party in interest and defend the same in your own name?

A. Louis W. Richardson was the record title owner of the property and we had nothing to conceal from anybody, as I told you a while ago. I told *you* at least a dozen people the first day after we bought the property that we had bought it. I had no concealment to make to anybody, certainly not from Mrs. Godfrey or her daughter, because I had the best evidence in the world that they had disposed of it in good faith.

Q. Now, will you try to answer my question?

A. The question I have just tried to answer or one you are going to ask?

Question repeated.

A. I have answered that.

Q. You have since been made a party defendant, have you not?

A. Yes, sir; I take it that is the right term.

Q. And you made a very great struggle, did you not, to prevent yourself from being made a party defendant?

A. No; I think not. Certainly not with a view of concealing anything.

Q. Why did you not come forward voluntarily and ask to be made a party defendant to defend your interests in your proper person as you have been compelled to do since, and not conceal yourself behind your young nephew and dummy and defend the suit in his name without revealing your connection with it? What was your motive?

A. We preferred it. We had no motive to conceal anything.

Q. You did all that without a motive, did you?

A. I certainly had no motive of concealment.

Q. What other motive did you have?

A. We preferred it.

Q. You preferred it?
A. Yes.
Q. What was your reason for preferring it?
A. I do not know that I had any particular reason.
Q. What was your motive in having your young nephew and dummy, Richardson, swear that he had parted with value, as the purchaser of said property, when you knew, and have since admitted in your answer, that he did not pay any of the consideration for the conveyance of these lots by Dutton?
A. My nephew was advised by his counsel to so swear, on the ground that he was absolutely the record title owner of the property.
1099 Q. Were you present when that advice was given?
A. I think I was.
Q. Will you swear that you were?
A. I will.
Q. And was his counsel E. H. Thomas?
A. He was.
Q. And had you informed Mr. Thomas that Mr. Richardson had not parted with any value, and had paid no part of the consideration for the conveyance?
A. Mr. Thomas was familiar with the whole transaction.
Q. Will you kindly answer my question?
A. Mr. Thomas was familiar with the whole transaction.
Question repeated.
A. I do not know that I referred to the matter at that time. I simply stated again that Mr. Thomas, as his attorney, was familiar with the whole transaction from the beginning to that point. I do not know what better answer I could give than that.
Q. Had you, or had you not, informed Mr. Thomas that Mr. Richardson had not parted with any value, and had not paid any part of the consideration for these lots?
A. I do not know that I did in that language, but I will state again that he was familiar and more familiar with the whole transaction than I was.
Q. Did you inform him of that or not?
A. I do not think the matter was referred to at that time at all.
Q. Did you ever inform him of that?
A. Not in a particular way.
Q. Did anybody ever inform him of that in your presence?
A. I do not remember. I know he knew the facts.
Q. How do you know he knew the fact that Richardson had not parted with any value for said premises nor paid any part of the consideration?
A. The possibility is I some time told him that Mr. Warner and I were the purchasers of the property.
Q. If you do not remember that you informed him yourself, and do not remember ever having heard anybody else inform him, how do you know Mr. Thomas was informed, and did know, as a matter of fact, that Richardson had not parte- with any value for

the said property nor paid any part of the consideration; how do you know?

A. I have told you I thought I knew; if you do not think that is right you had better put Mr. Thomas on the stand.

Q. Did Mr. Thomas ever state to you that he knew that fact?

A. I stated before that Mr. Thomas was familiar with the whole business, and he must have known that in connection with everything else, as far as this——

Q. (Interposing.) When you heard Mr. Thomas tell Mr. Richardson that he could swear that he had parted with value for said property, did you or did you not remind Mr. Thomas of the fact that he had never paid any part of the consideration and had never parted with anything of value for said property?

A. I asked Mr. Thomas the particular question, if he was familiar with all the circumstances in the case—is this a proper obligation for Louis to take under the circumstances? He said, Most undoubtedly; he is the record title owner of the property.

1100 Q. That was in regard to swearing to the answer as a whole, was it not?

A. As a whole, yes.

Q. And you did not call the attention of Mr. Thomas specifically, did you, to the particular allegations in that answer in which Richardson was made to swear that he had parted with value for the property?

A. I have stated three times that I did not.

Q. I will read you the following extract from the testimony of Louis W. Richardson, given in this case:

"Q. Do you swear that neither B. H. Warner nor your uncle, Wine, knew the contents of your answer to the original bill prior to the time the same was filed in court in this suit?

"A. No; I do not swear they had no knowledge of that; no, sir.

"Q. Is it not a fact that they did have knowledge of it?

"A. Yes; they had knowledge of it."

Is that testimony true or false?

A. It is true as far as I am concerned; I do not know anything about Mr. Warner.

Q. Now, you knew, did you not, that it was false for Mr. Richardson to swear that he had parted with value for that property?

A. Mr. Richardson was acting under the advice of his attorney, and the legal matters he knows better than I do.

Q. You knew, did you not, that it was not a fact that Richardson had parted with value for that property?

A. I knew he was parting with our value.

Q. You knew you had parted with the value, did you not?

A. I have just stated——

Q. And you knew that Richardson had no connection whatever with that transaction, except that he had consented to act as your dummy and let you have the use of his name in which to take the deeds; is not that true?

A. I knew he had the legal record title to the property, and asked the advice of the attorney in the answer.

Q. Won't you give an answer to my question that is not evasive?

Question repeated.

Q. Did you or did you not know that?
A. My last answer stands.
Q. I am asking you, as a matter of fact——

Mr. DARLINGTON: I submit the answer is no more argumentative than the question.

Q. What was your objection to having the truth stated in that answer, that Mr. Richardson had not parted with any value and had paid no part of the consideration, but had merely consented to have the title taken in his name, and that whatever consideration was paid was paid by you and Mr. Warner?
A. I gave the facts as they were. I stated that Mr. Richardson was parting with our value.
Q. What was your objection to having Mr. Richardson state in his answer that he was parting with your value, or, in other
1101 words, that the value that was parted with was from you and not from him?
A. He was acting under the advice of his trusted attorney.
Q. Why did you so studiously desire that that answer should conceal that you or Mr. Warner had any connection at any time with the transaction as purchasers?
A. I did not study over it one minute. It was in the hands of our attorney. I told you I had no concealment to make about the purchase of the property. I told twenty people in Washington on the next day, I suppose.
Q. So you had no motive at all in all this studied attempt to conceal the connection of yourself and Mr. Warner as having had anything to do with that transaction, except as brokers for Louis W. Richardson?
A. I had no motive that we wished to conceal that would materially affect the interests of anybody.
Q. Did you have any motive?
A. No motive, except in the outstart we used Mr. Richardson's name as a matter of convenience. I was just as liable to take any other boy in the office as Louis, but Louis happened to be in that day.
Q. And you admit that all that was done without a motive?
A. I do. There was no motive to do anybody an injury.

At this point a recess was taken until 2 o'clock.

After recess.

2 O'CLOCK P. M.

(It is agreed between counsel that the examination of the Boston witnesses before Mr. William H. Preble, commissioner, shall be held at his office, Sears building, Boston, on Thursday, the 16th day of June, 1898, at 1 o'clock p. m.)

LOUIS D. WINE then resumed the stand for further cross-examination.

By Mr. KEANE:

Q. And so the falsehood was a purely wanton one, was it, your having Richardson swear that he had parted with value for that property, when you knew, as a matter of fact, that he had parted with nothing and paid no part of the consideration?

A. He acted under the advice of his attorney.

Q. And you know of your own knowledge, do you, that that attorney, E. H. Thomas, was fully informed of the fact that Richardson had parted with nothing and paid no part of the consideration for that property?

A. I answered that question some time ago that I believe Mr. Thomas was thoroughly familiar with the whole business.

Q. That is not yet an answer to my question.

Question repeated.

Mr. KEANE: Do you or do you not know that of your own knowledge?

A. I answered the question, and I answer the same way.

1102 Q. Have you any reluctance to tell us whether or not you know that of your own knowledge?

A. I would have no reluctance in telling you——

Q. (Interposing.) Will you not tell us, then?

A. I told you I believe that he knew it. I do not know positively.

Q. I am trying to get at not what you believe, but whether or not you have any personal knowledge on the subject.

A. I have told you what I know.

Q. Do you deny that you have any personal knowledge on the subject?

A. I do not think I have, except in a general way. We never talked on that subject particularly that I remember.

Q. Do you deny that you yourself advised your young nephew and dummy, Mr. Richardson, that it was all right for him to swear to that answer?

A. I may have told him it was all right under the advice of the attorney. I relied entirely upon him.

Q. And so, knowing the truth to be that Richardson had parted with no value and paid no part of the consideration for that property, you advised this young nephew of yours, did you, whom you thus employed as a dummy, that he could and it would be right for him to swear that he had parted with value for that property. Is that right?

A. His attorney advised him.

Q. You knew it was false, did you not?

A. Knew what was false?

Q. That statement in that answer, that Richardson had parted with value for that property when he had paid no part of the consideration.

A. I told you four times that he parted with value of Mr. Warner and myself.

Q. Who parted with value, you and Mr. Warner or Mr. Richardson?

A. I have just stated that I have told you four times that Mr. Richardson parted with the value of Mr. Warner and myself.

Q. You knew you and Mr. Warner had parted with the value, did you not?

A. I have answered that question five times now. I have told you at least five times.

Q. If you and Mr. Warner had parted with the value, then it was not Richardson, was it, who had parted with it?

Mr. DARLINGTON: I object to the question as argumentative. The witness has clearly detailed the facts, and I think counsel must agree that an argument with him will not enlighten the issues or be competent.

A. I was going to say that I thought you ought to be lawyer enough to discriminate that.

Q. You thought, did you, that as a lawyer I ought to consider that a client would be justified in swearing to what he knew to be a falsehood because his lawyer had told him to do so? Is that what you thought?

A. No; that was not the question. The question was as to whether Louis had parted with value or whether we had parted with value.

Q. Is not that a question of fact?

A. I say that is a fact, but you seem to doubt it.

1103 Q. If it was a question of fact and not a question of law, I would like to know whether, in your opinion, a client ought to swear to what he knew to be false as a question of fact because his lawyer had told him to so swear.

Mr. DARLINGTON: Objected to as not calling for evidence, but for an opinion, which is incompetent.

A. His lawyer told me it was right for him to swear to that, as he was absolutely the record title owner of the property.

Q. Because he was the record title owner of the property? Was that sufficient to create the fact that he had parted with value when he had not done so?

Mr. DARLINGTON: Objection repeated.

A. I am not able to tell just what construction Mr. Thomas put upon that. He may have construed it that the value was parted with whether it was Louis or Warner or myself. That is the best answer I can give you to that, I think.

Q. But here was a fact, was it not—namely, whether Richardson had or had not paid any part of that consideration, and what had Mr. Thomas' interpretation to do with changing or altering that fact in any particular or making it otherwise than false when it was stated by Mr. Richardson under oath with your advice he had

parted with value, knowing as you did and he knowing that he had parted with not one dollar of consideration?

A. I told you it was done under the advice of the attorney, not under my advice.

Q. You deny, then, do you, that he consulted you and took your advice as to whether he ought to swear to that before doing so?

A. I have told you forty times that he acted under the advice of the attorney.

Q. You deny, then, do you, that he consulted you and took your advice first before he swore to that?

A. I have answered that—that he acted under the advice of his attorney. I have stated most emphatically that, I know, twenty times.

Q. Now, is it not a fact that if the truth had been told, namely, that you and Mr. Warner, and not Mr. Richardson, had parted with the consideration or value for that property, it would have been necessary to expose and reveal the truth, namely, that you and Mr. Warner, and not Richardson, were the real purchasers of that property, and he only a dummy? Is not that true?

A. I want to swear again, and swear most emphatically, that we had no concealment in this case from anybody with the intention of defrauding or deceiving anybody whomsoever.

Q. Your statement in that respect is contradicted by the history and facts of the case. Mr. Wine, it is going to be for the court to determine that question, and if you will simply answer my questions when I put them to you, that is all that it will be necessary for you to do.

1104 Question repeated.

A. I have said half a dozen times that we had no facts to conceal in this matter within five or ten hours after the property was purchased and Mr. Richardson was named as the purchaser, and I am sure I told a dozen friends that I had bought the property, and your own witness, Mr. Wight, swore on the witness stand that I revealed the fact to him.

Q. Well, we will come to that in a minute. If you will be kind enough now to answer my question or refuse to do so—do you refuse to answer my question?

A. I have answered the question a half dozen times.

Question repeated.

A. It would have disclosed the fact. It would not have revealed a fact which was not already known.

Q. Was not the motive that actuated you in so studiously concealing in the answer of your young nephew and dummy, Richardson, the fact that the consideration for that property had been paid by you and Mr. Warner, and not by him, purely and only in order that you might not disclose the relation of yourself and Mr. Warner as the purchasers?

A. Emphatically no.

Q. Why was it, then, that in that answer, from beginning to end, you studiously concealed that either yourself or Mr. Warner had any relation whatever to the transaction of the purchase of that

property except as brokers of your dummy and young nephew, Richardson?

A. There was no occasion to reveal it.

Q. Was there not the important occasion of telling the truth in the sworn statement made to a court, and not stating a falsehood?

A. You ask me as an expert that question?

A. In any capacity that you choose, and you are at liberty to decline to answer the question, if you choose.

A. I will answer it as I have answered it before. He answered it under the advice of his attorney.

Q. Were not the facts set forth in the answer of Richardson to the original bill furnished to your lawyer, Mr. Thomas, by yourself or Mr. Warner or both?

A. I think I asked him to prepare the answer.

Q. And who furnished the facts, so that he might prepare the answer? How did he learn those—from whom?

A. I think from myself.

Q. You have not any doubt on that subject, have you?

A. I think I am clear on that.

Q. How many interviews did you have with Mr. Thomas prior to the time that Mr. Richardson swore to the answer?

A. I do not remember; just as few as possible.

Q. Can you not state approximately how many interviews you had with Mr. Thomas?

A. No; I cannot.

Q. Did you always have Mr. Richardson present during the interviews that you had with Mr. Thomas in furnishing him with the facts, so that he might prepare the answer?

A. I do not remember.

Q. Did you ever have Mr. Richardson present at any of
1105 the interviews when you were furnishing Mr. Thomas with the facts, so that he might prepare Mr. Richardson's answer?

A. I think so. My recollection is not perfectly clear on that.

Q. After Mr. Thomas had prepared the answer, did he read it over to you?

A. I do not think he did. I think I read it myself.

Q. Then Mr. Richardson is correct, is he not, in his testimony where he swears as follows: "Q. You have said Messrs. Warner and Wine had knowledge of the contents of that answer before it was filed. How do you know that? A. Mr. Wine, I know, had read it and knew of the contents"?

A. Yes.

Q. I show you a copy of the answer of Mr. Richardson to the original bill to refresh your recollection, and I ask you to look at it and state the date when the same was subscribed and sworn to by Mr. Richardson, as attested by the notary public.

A. The thirtieth day of November, 1896.

Q. So that at the time when that answer was prepared by Mr. Thomas and sworn to by young Richardson you had known for a

long time, had you not, that Stephen A. Dutton, Richardson's grantor, had been indicted and arrested for having swindled this complainant out of this property?

A. Yes; I know he was arrested and had a trial.

Q. And you knew on that trial he had been convicted of the felony of having defrauded this complainant of this property, did you not?

A. From hearsay I did; I was not present at the trial.

Q. And you knew, did you not, that the complainant at the time of commencing this suit against Mr. Richardson had not as yet acquired any knowledge of the fact that he was only a dummy in the transaction, and that you and Mr. Warner were the real parties in interest?

A. I would have supposed it would be entirely immaterial to Mrs. and Miss Godfrey whether Louis Richardson had taken the title or whether B. H. Warner and Louis D. Wine had taken the title. I did not suppose it was a matter that concerned them at all who had the title.

Q. Mr. Wine, instead of evading my question, will you not try to give me direct answers instead of compelling me to follow you up until I obtain them after so much labor?

A. I am under oath. I am trying to answer your questions as honestly and as truly as if I were to answer to my God.

Q. Will you, then, pay attention to my questions and give direct answers to them? for you are not certainly answering my questions.

Question repeated.

A. I do not know whether she obtained that information or not.

Q. Was it not clear to you from the bill of complaint to which the answer was filed by Mr. Richardson that the complainant did not know that Richardson was only a dummy, and that you and Mr. Warner were the real parties in interest?

A. I do not know what she knew from that. As I told you once or twice, I did not read that bill carefully; I merely turned the matter over to Mr. Thomas for answer.

1106 Q. How were you able to give Mr. Thomas facts that were necessary for him to prepare an answer to that bill of complaint if you did not know what the bill of complaint was?

A. As I stated before, I turned the whole matter over to Mr. Thomas. If he had any questions to ask me concerning it, I suppose he asked me. I do not remember what they were.

Q. So your reading that bill of complaint was not careful enough to inform your mind of the allegations which it contained; is that so?

A. The reading of it was clear enough for me to determine that the best thing for me to do was to turn it over to his attorney.

Q. But you read it so carelessly that your mind was not informed as to what the allegations were which it contained; is that true?

A. That is in a measure true. I read it over perhaps hastily, as I have stated previously, and determined it required a lawyer to answer it, and I turned it over to Mr. Thomas.

Q. When you saw by that bill of complaint that you and Mr.

Warner were not the parties defendant, and that Mr. Richardson was sued without joining you or Mr. Warner, did not that convey to your mind the fact that as yet the complainant had not discovered that you and Mr. Warner were the real parties in interest and Richardson only a dummy?

A. I think you have asked me that question at least half a dozen times.

Q. I think that is the only time that I have ever asked you that question. I am sorry if you cannot understand the questions I ask you, but that is not my fault. I want that question answered.

A. She may not have discovered it. We were not trying to conceal it from her particularly. I told you I have answered that question half a dozen times. We had nothing to conceal in the matter. I have told you that a dozen or more times. I also told you that I told a dozen men the same day or the next day afterwards that Mr. Warner and I had purchased that property. If there had been any concealment for the purpose of deceiving Mrs. or Miss Godfrey, why do you imagine that Mr. Warner, or myself, either, would go on the highways and byways and tell our friends we had absolutely purchased the property?

Q. I want to say to you that your counsel will sum this case up in due time, and that at the present it is your duty simply to answer questions that are put to you directly and to conclude when you have finished your answer.

Mr. DARLINGTON: In view of the fact that four-fifths of the questions put to the witness are argumentative, I submit that the injunction thus delivered ought to be taken home to counsel quite as well as to enjoin upon the witness. It is perfectly useless to encumber the record and to consume the time of counsel and the court with this long iteration and reiteration of argumentative questions of this character. The facts have long since been developed.

The WITNESS: I was going to say——

Mr. KEANE: Mr. Darlington having returned now, I sup-
1107 pose we are to have the testimony of witnesses again interrupted by speeches which fortunately during Mr. Mattingly's charge of the matter did not take place.

Mr. DARLINGTON: The court will decide whether or not my objection is well taken and whether or not it ought not to have been interposed before.

Mr. KEANE: I submit that my cross-examination ought not to be interrupted in this manner.

Mr. DARLINGTON: Very well; go on.

Q. You did not tell Mrs. Mussey that you had purchased the property, did you, at the time you were doing so?

A. I do not remember that I did. She may have taken it for granted.

Q. You do distinctly remember that you did not tell Mrs. Mussey that you had bought the property, do you not, at the time?

A. I made my answer there.

Q. Do you not remember that you swore, in answer to the fifth

additional interrogatory, as follows: "Q. Did you disclose to Mrs. Mussey at the time of said transaction, to wit, in April, 1896, that Louis Wine Richardson was merely a dummy and you and your partner were the real purchasers? A. I said nothing to Mrs. Mussey upon the subject of Louis Wine Richardson's connection with the matter." Is that true or false?

A. Is that my answer to the interrogatory?

Q. What is your recollection about it?

A. Is that my answer to the interrogatory? Read it again, please.

Q. I want to see if you can remember what you swore to. Don't you remember what you swore to?

A. Read it, and I will tell you whether I did or not. You want me to swear to a falsehood, do you?

Q. I want to see whether you remember what you did swear to.

A. Read it over again.

Q. I have read it once; is not that sufficient?

A. I would rather you would read it over again.

(Quoted question and answer again read.)

A. That is true, I think.

Q. You remember you swore to that, do you not?

A. My name is appended to the affidavit, is it not?

Q. What is your reluctance to give direct answers to my questions?

A. I have no reluctance at all. I want to answer them truthfully.

Q. Do you not know that you would save a good deal of time if you will answer my questions directly like other witnesses do? Now, having had your memory refreshed by hearing read the answer that you made to the fifth additional interrogatory, you do distinctly remember, do you not, that you did not tell Mrs. Mussey, at the time of this transaction, in April, 1896, that you and Mr. Warner were the purchasers and Mr. Richardson only a dummy?

A. To the best of my knowledge and belief, I did not.

1108 Q. It would not have been necessary to have gone out on the highways and byways, would it, to have frankly and candidly disclosed, at the time of the transaction, to Mrs. Mussey that Mr. Warner and yourself were the real purchasers, and Richardson your dummy?

A. My relations——

Q. Will you answer that question directly? Would that have been necessary?

Question repeated.

A. I would not have hesitated a moment to have told her if she had inquired.

Q. And on the 12th day of May, when you made an affidavit at the request of Mr. Czaki, which has been read to you, you could also just as easily have frankly and fully disclosed in that affidavit, could you not, that you and Mr. Warner were the purchasers of that property and Richardson only a dummy, instead of concealing in that

affidavit that either you or Mr. Warner had any relations at all with the transaction except in the capacity of broker for Richardson?

A. I cannot see what possible harm it could have done Mr. Warner or me——

Q. (Interposing.) Will you answer the question directly?

A. I am answering it.

Q. I ask you to answer that question directly and not to evade it or talk about other matters. I want an answer to that question. Do you refuse to answer directly?

A. I will answer it in my own way.

Question repeated.

A. I could have done so without any possible injury to Mr. Warner or myself or Mrs. Godfrey or Miss Godfrey.

Q. On the contrary, it would have been of great benefit to Miss Godfrey, would it not, if you had from the beginning disclosed that you and Mr. Warner were the purchasers of that property instead of studiously concealing that fact on every occasion where it became your formal duty to speak of that transaction in court, until you were brought in as defendants by the complainant, after she had learned the fact?

A. Perhaps it would. If Miss Godfrey had come to me and asked the question, perhaps I would have disclosed the fact to her. I think I would.

Q. It would not have become necessary for her to come to you, would it, if, when you were putting in that answer for Richardson, you had not concealed your connection as the purchaser, but had frankly avowed it in that answer?

A. I presume not.

Q. Do you know how she could have come to you without first suspecting that you and Mr. Warner were the real purchasers and Richardson the dummy in the transaction?

A. I merely said if she had come, but she did not.

Q. Is not your statement false, in answer to the seventh additional interrogatory, where you swear that Dutton never paid any interest upon the encumbrances after the sale, while interest was always paid by your codefendant and yourself?

A. We acknowledge that error by having an affidavit filed
1109 by Mr. Rheem, who made up the statement for Mr. Warner and me, that it was merely a clerical error.

Q. I will ask you to look at the deed, as copied in the record, that was offered in evidence, being the deed dated April 15th, 1896, executed by Louis W. Richardson, conveying this property, lots 1, 2, 3, and 66, square 134, to you and Mr. Warner, and I ask you to state at whose request Mr. Richardson executed that deed?

A. I think he understood from the beginning——

Q. Now, can you give a direct answer?

A. I want to tell the story——

Q. Please answer the question directly.

Question repeated.

A. I cannot say. I want to tell you——

Q. I want an answer to my question.

The WITNESS: I want to tell it in my own way.

Mr. DARLINGTON: You have now answered the question and you can add any explanation you desire. That is your right.

Mr. KEANE: I object to Mr. Darlington interposing in this critical and crucial examination of this defendant in this manner and interrupting him as he is doing when I am cross-examining this witness. I say to Mr. Wine that it is his duty to answer questions and when he has answered them to stop and to make his answer direct.

Mr. DARLINGTON: I say to Mr. Wine that he has the well-recognized privilege of adding anything proper in the way of explanation to any answer he makes.

A. I was going to make it as clear and honest as I could. It was understood from the beginning——

Mr. KEANE: I object to the witness stating what was understood and move it be stricken from the record. It is improper and incompetent for Mr. Wine to state what he understands.

Mr. DARLINGTON: That is right. He has no right to state what he understands.

Mr. KEANE: This incompetent testimony results from the fact that Mr. Darlington is preventing the rules of cross-examination being carried out, namely, that a witness shall answer only the questions that are asked him, and stop when those are answered.

Question again repeated.

A. I think at mine and Mr. Warner's.

Q. Is not that a very simple question to answer? Why do you not answer questions simply and directly?

Mr. DARLINGTON (to the examiner): Just note on the record that counsel attempted to take out of the witness' hands the copy of the deed.

The WITNESS: You must remember this if the first time I was ever on the witness stand, and if I make mistakes I ought to be excused.

1110 Mr. KEANE: I have told you that all you have to do is to give direct answers to questions. That is a very simple thing.

Q. Have you forgotten about the existence of that deed dated April 15, 1896, and executed April 16, 1896, being acknowledge before Henry J. Gross, notary public, on that day, when the answer of Richardson was being prepared by E. H. Thomas with your aid and assistance?

A. No.

Q. So that at the time that you had this answer of Richardson's prepared by Mr. Thomas, and at the time that said answer was sworn to by Mr. Richardson, November 30, 1896, on your advice he had executed several months previously, to wit, on the 16th of April, 1896, this deed conveying these lots, 1, 2, 3, and 66, square 134, to you and Mr. Warner; is not that so?

A. He answered under the advice of his attorney, not under my advice.

Q. And had you disclosed to your attorney, Mr. Thomas, the fact that on April 16, 1896, this young nephew and dummy of yours, Richardson, had executed this conveyance of those lots to you and Mr. Warner?

A. As I have stated before, I think Mr. Thomas was familiar with all the facts in the premises.

Q. Had not Mr. Richardson, simply out of kindness to you and as a matter of favor, and without compensation of any kind, given you the right to use him as a dummy in this transaction and to take the deed to that property in his name?

A. There was no compensation about it. I did not regard it as a special favor at the time, because any of the boys in the office would have answered the same purpose.

Q. Were you present when Mr. Richardson gave his testimony in this case?

A. I was.

Q. Do you not recollect his expressing regret upon the stand when he was testifying that he had allowed you to use his name as the dummy in this transaction?

A. I do not remember it.

Q. I will read you from Mr. Richardson's testimony as follows, to see if I can refresh your memory:

"She, meaning Miss Godfrey, said she thought I had an honest face, or something of that kind, and said she thought it was such a pity that a young man like myself should be implicated in such a matter, should be hoodwinked, &c., or words to that effect; I do not remember the exact conversation. I told her also that I was sorry to be in the position."

Do you remember that?

A. No; I do not. I never heard him express any regret outside that he was in it.

Q. Now, will you relate what you stated to Mr. Richardson when you asked him for the use of his name as a dummy in this transaction?

A. I do not know that I can relate it exactly, but I presume it was "Louis, I want you to"——

Q. I do not want to know what you presume.

A. I do not remember the exact language. If you do not want it that way, I will not state it.

Q. I do not want you to presume.

A. Then, I do not remember.

1111 Q. I can guess as well as you can. Do you remember whether any one was present?

A. I do not.

Q. Do you remember how long it was after you had had your interview with Mrs. Mussey on the tenth of April?

A. The same day.

Q. Was it before the end of your interview with Mrs. Mussey?

A. Before the end? No.

Q. How long was it after Mrs. Mussey had concluded her interview with you and left you?

A. I think I stated in my direct testimony this morning that I sent the contract over to Mrs. Mussey between two and three o'clock. She was in the office about that time. He signed it, and I sent it right over to her, or took it over; I do not recollect which just now.

Q. What had you said in your interview with Mrs. Mussey that led you to follow up that interview by having Louis W. Richardson sign this contract of sale and your sending it over to Mrs. Mussey?

A. I said, I think, nothing to her at all, except she offered me the property for sale. I had said nothing to her about Louis buying it or buying it myself.

Q. Did you send her over this signed contract of sale without having told her at that interview that you would do so?

A. I did not tell her anything about it at the interview at all. I thought over the field of possible purchasers of the property, and could not think of anybody who would be likely to buy it at that time.

Q. Are you answering a question?

A. I think you asked the question, and whether I am or not answering a question, I am giving you the facts.

Q. Have I asked you? I do not want you to repeat your direct testimony again. Will you confine yourself to answering questions when they are asked?

A. What is the question?

Q. There is no question on record just now. When Mrs. Mussey had her interview with you that morning, did you accept or decline her proposition?

A. I acceded to her proposition in this, that I would try and dispose of it for her.

Q. And then you sent over this contract of sale, did you, a few hours afterwards; how long afterwards?

A. Do you remember my direct testimony? You say you do not want me to repeat that. I cannot answer without repeating my direct testimony.

Q. You are intelligent enough to be able to answer a question that is asked you.

Question repeated.

A. She was in the office about half past ten o'clock in the morning.

Q. Can you not say how long afterwards without going all over those facts?

A. Is it not the same to you, if I tell the truth?

Q. Can you not tell me simply how long it was without going over all those facts? Can you not state it was so long afterwards without going over all that?

A. Take 10.30 from 2.30. I think it would be about that; I will say about 4 hours.

Q. Do you own any real estate in your own name?

A. Yes, sir.

1112 Q. Do you own many pieces of real estate?
A. I have large interests out at Hyattsville.
Q. I do not want to go into your private affairs; I want to know simply whether you own many pieces of real estate or not.
A. Not very many. I am not a rich man by any means.
Q. I do not ask that. I want to know whether there is much real estate standing in your own name.
A. Individually?
Q. Yes.
A. No; not much. My interest is largely in connection with other gentlemen.
Q. Where was the last piece of real estate that you acquired title to in your own name?
A. Takoma Park.
Q. How long ago was that?
A. Six or seven months. I do not remember how long.
Q. About six or seven months?
A. Yes; I acquired that title with a trust upon it because I was compelled to.
Q. But you took the title in your own name, did you not?
A. Yes, sir.
Q. You did not use a dummy, did you?
A. No; I wish I had in that case. I would like to say——
Q. Now, you have answered that question.
A. No; I want to answer it further.

Mr. KEANE: I object to the witness spreading on the record, on cross-examination, statements that are not called for.
Mr. DARLINGTON: Witness is advised that he has a right to make any reasonable explanation he desires.
Mr. KEANE: I submit the question is fully answered, and it requires no further explanation.
The WITNESS: I do not insist upon it.
Mr. DARLINGTON: You need not allow yourself to be cut off if you do not want to. The court-, especially the courts here, say a witness has a right to make any reasonable statement in explanation of his answer if he desires.
Mr. KEANE: I object to Mr. Darlington encouraging the witness to go on as he has been doing throughout this cross-examination, as it is entirely irregular.
The WITNESS: I will say that I am through.

Q. The taking of property in this case in the name of a dummy involved, did it not, "the trouble and inconvenience" of obtaining the consent of the dummy, he being under obligation to him for the favor or service and the execution of two deeds instead of one, namely, the deed to the dummy, which was recorded, and a secret deed from the dummy to yourself, which was not recorded?
A. Yes; but that would be offset by——

Mr. KEANE: Are you asked anything——
Mr. DARLINGTON: Continue your answer.

Mr. KEANE: Are you asked anything beyond what you have answered?

Mr. DARLINGTON: I instruct the witness that he is not
1113 limited to yes and no answers. He has undoubtedly the right to make explanations, and it is his own fault if he allows himself to be cut off in this way.

Mr. KEANE: Cross-examination is for the purpose of bringing out anything that counsel thinks may be in explanation of the direct examination, and I submit that this witness should not, after he has answered a question directly and fully, go on and spread upon the record whatever he wishes to say outside of the question asked.

Mr. DARLINGTON: You have a right to continue your answer if you desire to do so.

The WITNESS: I was going to answer the question, but I was not through. I was going to say, Yes; but all obligations and trouble would be more than offset by the convenience of transferring that property to the party, if he desired it, without Mr. Warner or my wife; just the direct deed from Louis.

Q. Would it not have been just as simple, if not more so, to have taken the title in your own name and to have had your wife sign the deed when you wished to sell it?

A. That is a hypothetical question and one which you are just as capable of answering as I am.

Q. In that way would not you have avoided the necessity of having two deeds, namely, the deed to your dummy from Dutton and the secret deed from your dummy to yourself?

A. That is another hypothetical question, and you as a lawyer ought to know about what the trouble would be.

Q. Did you consult your wife first before taking this property in the name of a dummy?

A. I did not.

Q. Do you know why it is necessary for a wife to join in a deed with her husband when he wishes to dispose of property?

A. I do.

Q. It is because she has a right of dower in that property. is it not?

A. That is what you lawyers say; I guess it is so.

Q. You did not intend, did you, to commit a fraud upon your wife's right of dower by taking property in the name of a dummy without consulting her?

A. No, sir; I never have tried to commit a fraud on anybody, much less my wife.

Q. Yet it would be a fraud, would it not, upon a wife's right of dower for her husband to take real estate without her knowledge in the name of a dummy and to dispose of it without her knowledge?

Mr. DARLINGTON: I object to the question as not only wholly irrelevant to this case, but as calling for a legal opinion and a proposition of law at that.

Mr. KEANE: I think the relevancy will appear shortly.

The WITNESS: You want me to answer that as an expert?

Q. I want your opinion of it as a matter of conscience.

A. As an expert?

Q. No; as a matter of right and wrong; a matter of conscience.

A. A matter of conscience between me and my wife? I cannot tell you about other men's wives. I am telling you about my own.

1114 Q. I am putting the question of right or wrong in the taking of property in the name of a dummy without the knowledge of a man's wife and disposing of it again without her knowledge, whether you consider that that involves or not a fraud upon a wife's dower. I want to know what your understanding of this matter is.

A. This transaction was no fraud to my wife.

Q. Can you not answer that question?

A. That is the best answer I can give you. I am not an expert in those things.

Q. The taking of property, therefore, in the name of a dummy, if it is done, if straight, also involves, does it not, the trouble and inconvenience of obtaining the consent of the wife to so take the property or her consent to dispose of it when it is proposed to sell the same to avoid committing a fraud upon her dower?

Mr. DARLINGTON: Objection repeated.

A. I do not think it is necessary in either case.

Q. If you had taken the property in your own name, what trouble or inconvenience would it have involved to your wife when you desired to sell it except the signing of her name in the presence of a notary public?

A. That would have been all that was necessary.

Q. State fully all you recollect that took place at the time of your interview with the complainant's mother on the occasion of this property being placed on your books for sale for $55,000.

A. The interview, as I recollect it, is very brief. Mrs. Godfrey came in there. I do not know but I was introduced to her by Mr. Phillips. I am not sure about that; and she said it was for sale, and remarked that it was the prettiest corner in Washington, and the price was $55,000, and my recollection is I told her that it would be a long time before she would get it. I thought it was an exceedingly high price, and I then asked if other parties had it for sale, if we had the exclusive control. She said no other parties had it for sale. That is all I recollect of it.

Q. And do you not also recollect that on that occasion, while you were having that conversation with Mrs. Godfrey, that Mr. Warner came up to you and joined in the conversation?

A. I do not.

Q. Do you remember who was present at that interview that you have just described with the complainant's mother except herself and you?

A. I do not remember anybody but Mrs. Godfrey and Miss God-

frey, and I am not certain about that, about Miss Godfrey, but I think Miss Godfrey was there.

Q. How is it that you are able to recollect that interview so clearly?

A. I have refreshed my memory of it recently.

Q. It took place, did it not, in October, 1893?

A. Somewhere along there, I think.

Q. Did you refresh your recollection about that interview since it occurred by conversing with the complainant or her mother as to what had taken place?

A. No, sir.

Q. How, then, did you refresh your recollection—by an act of memory bringing back the facts as they happened?

A. Yes, sir.

1115 Q. Did you have any written memorandum of what had transpired to aid you?

A. I had nothing except a slight description of the property.

Q. That is all? But nothing to aid your mind or your memory with regard to the actual conversation?

A. No.

Q. I ask you to look at the book which I hand you and tell me whether that is not published by your firm, B. H. Warner & Company (handing witness a pamphlet).

A. Yes.

Q. I offer in evidence the notice on the back of the first page, which reads as follows:

"To owners:

There are few people desiring to purchase property in this District who do not call for our list before doing so. Frequently we can suit them; sometimes we cannot. The fact remains, however, that if you wish to call your property to the attention of a large class of buyers it may be done by placing it on our books for sale. It will cost you nothing, unless a sale is effected, in which case only legitimate commissions will be charged. Our facilities are unsurpassed for handling all classes of property for sale within the limits of the District of Columbia. We can show the best results for owners who give us the sole agency of their property, both as to selling and renting, as in such case we advertise the property extensively at our own expense, and otherwise give it attention that we cannot afford to give to property in the hands of other agents at the same time.

All entries will be held in force until changed or withdrawn by notice, and all reasonable offers secured will be promptly reported."

Marked Exhibit L. D. W. No. 1.

How many years have you been publishing that notice?

A. To the best of my knowledge and belief, about five years. It might be less, and it might be a little longer.

Q. That is to the best of your knowledge and belief?

A. Yes, sir.
Q. How has the market been since the fall of 1893?
A. It has been very poor.
Q. How is it now—about the same?
A. A little worse, I guess.
Q. It has been very dead all that time, has it?
A. Very quiet.
Q. For a dull market that was a pretty quick sale, was it not, that Mrs. Mussey made of this property to you?
A. That was a right quick sale.
Q. It did not take you very long to make up your mind to buy that property, did it?
A. No, sir.
Q. If you did not think you were getting a great bargain when Mrs. Mussey offered you that property on the tenth of April, please explain why it was you made up your mind so quickly to conclude the purchase of it.
A. I am very frank to admit that I thought there was a speculative profit in the property. If there had not been I would
1116 not have bought it. I thought there was an opportunity at some time to make $5,000 on it. Of course, I should not have bought it if I did not think there was a profit of speculation. Men do not generally do those things.
Q. Do you remember where you spent the evening of April 10, 1896?
A. No.
Q. Do you not remember a little visit you made to John B. Wight?
A. Oh, yes. I do not know whether it was the 10th or 11th. I cannot say positively as to that. I remember that very well.
Q. Do you recollect consulting Mr. Wight as to what his opinion was as to the value of that property?
A. I do not think I consulted him at all about the value of the property, because I thought I knew as much about the value of it as he did.
Q. Do you remember asking his opinion about what it was worth?
A. No, sir.
Q. Do you recollect his telling you that property was worth $50,000?
A. Yes.
Q. You do recollect that?
A. I want to tell you this——
Q. Do you recollect that?
A. I am going to tell you if you will let me.
Q. I simply ask you to tell me yes or no.
A. To make the testimony short I will state that I heard the testimony of John B. Wight, and practically everything he said there was true.
Q. Please answer my question directly; that is all I ask you; do you recollect his telling you that Dutton had informed him that he

gave property worth $65,000 in exchange for this property, lots 1, 2, 3, and 66, square 134?

A. I think he said so.

Q. Do you recollect your telling Mr. Wight that you had that property offered you at a great bargain?

A. I think I told him that I had bought it for $25,000. He was one of the first men I did tell.

Q. And do you not recollect that when you had that conversation with him it was in his house, and that you began the conversation by telling him that you wanted to talk to him confidentially?

A. No, sir; I was not in his house; it was out on his door step. I was going home, and he was sitting on his door step; we met there; there was nothing confidential about the talk at all; if there had been, John B. Wight would have made great abuse of it by going on the stand and giving it away; there was nothing confidential about the conversation.

Q. He may not have considered that under the circumstances; he was obliged to treat it as confidential.

A. He would not break confidence with me in that way. I have too great regard for him.

Q. You enter into a colloquy as if you were not on the witness stand; you seem to forget.

A. So do you seem to forget, but I will be a nice boy if you will.

Q. I have cautioned you so frequently about this, but you seem to pay no attention to it.

A. All right. I will try to be a nice boy if you do.

1117 Q. If your suspicions were so much excited by Dutton's haste to dispose of this property that you asked Mrs. Mussey for an explanation why he was in such a hurry, did not her answer that he was a judgment debtor from New York, where he had several judgments against him, have the effect rather to increase than quiet your suspicions?

A. The fact that Mrs. Mussey told me——

Q. Can you answer that directly?

A. Yes, sir; the fact that Mrs. Mussey told me he had judgments against him in New York which if not settled would give him trouble made it strengthen the cause that we were representing, that it was important to make this sale quickly. If I had a judgment against me I would sell my boots in five minutes for half price.

Q. Do you think that Mrs. Mussey's explanation of Dutton's great haste in disposing of his property in Washington, namely, that he had several judgments against him in New York, should have had the effect to lull suspicion in the mind of a prudent and reasonable man in regard to a judgment debtor's intentions in so hastily disposing of his property rather than to arouse and increase such suspicion?

Mr. DARLINGTON: Objected to as calling for an opinion of the witness and not for any evidence in the case.

A. In connection with Mrs. Mussey's statement to me that he came to her with a letter of introduction from one of the dearest friends that her husband ever had, I would not think that would create suspicions at all. I think it would allay suspicion.

Q. And you knew, did you not, that that good friend of Mrs. Mussey's husband had been swindled by Dutton out of $10,000?

A. Not at that time.

Q. Do you know you learned that fact at the same time that you learned that a letter of introduction had been given to Mrs. Mussey by Dutton?

A. I did not learn it at the same time.

Q. You mean to say that Mrs. Mussey mentioned to y-u that Dutton had brought her a letter of introduction from Twombly without telling you that Dutton had swindled Twombly out of $10,000?

A. I swear most positively she did not at that time. I am not sure that she told me that at all. I was under the impression that I gathered that information from Mr. Czaki.

Q. Your memory is really not reliable enough to distinguish whether she communicated those facts to you at the same time or at different times, when you do not even definitely remember whether it was Mrs. Mussey or Mr. Czaki that told you that Dutton had swindled Mr. Twombly out of $10,000?

A. I feel sure and swear to the best of my knowledge and belief that Mrs. Mussey did not, when she said to me that Dutton had come to her with a letter of introduction from one of her husband's best friends, say to me that he had swindled her best friend out of $10,000. It would have been a strange thing for a woman to have told that in the same connection.

Q. Would it not have been a still stranger thing in Mrs. Mussey mentioning one fact to you without mentioning the other?

1118 A. I asked her the question, why this haste in settling the matter up, when she had erased 15 days and put in 5 days.

Q. You did ask her that question?

A. Yes, sir.

Q. You wanted to know this haste in settling up this matter—that is what you said to her?

A. Yes, sir. She said, "He comes to me with a letter of introduction from one of the best friends my husband ever had."

Q. Did she show you that letter of introduction?

A. No, sir.

Q. Did you ask her to show it to you?

A. No, sir; I did not ask her. I took her word for it. I heard the letter read.

Q. Now, you have sworn, have you not, in answer to the eleventh additional interrogatory, that you made no inquiries about Dutton? Did you not so swear?

A. I may have sworn so. It is strange if I did not inquire of the woman I was buying from.

Q. And all the information you had of Dutton was that he had a letter of introduction to Mrs. Mussey?

A. My information was from Mrs. Mussey, in whom I have the greatest confidence as to her integrity and as to her judgment of right and wrong.

Q. Now, can you answer my question, having relieved yourself in that way?

Question repeated.

A. Yes; I got it from Mrs. Mussey.

Q. Except the information that he had judgments against him in New York. Is not that so?

A. I stated that all the information I had of him was from Mrs. Mussey. I told you that she had told me that.

Q. And that he was in great haste to dispose of this property?

A. That was the inference.

Q. And knowing that Dutton was a judgment debtor with several judgments against him in New York, and knowing the great haste with which he desired to dispose of this property in Washington, and the price at which it was offered you, were you not surprised when Mr. Wight told you the same evening, April 10, 1886, that Dutton alleged that he had just exchanged for it property worth $65,000?

A. Not at all.

Q. You were not surprised at that?

A. No, sir. Very queer trades are made in the world.

Q. In your answer to the eleventh additional interrogatory in the bill of discovery herein you stated that you made no inquiries about Dutton, because you knew of no occasion for such inquiries. Do you mean you considered the fact that Dutton was a judgment debtor from a foreign State, where judgments were hanging over him, in great haste to dispose of property in Washington, which he had just acquired, did not suggest to you as a business man, of ripe experience, the thought that his haste might be due either to the fact that he had got the property by fraud, or was hastily disposing of it to defraud his creditors, or, as the fact was, for both reasons?

A. Mrs. Mussey's assurances to me were sufficient guarantee that all was right.

1119 Q. The fact that the judgment debtor had a letter of introduction you thought rendered it unnecessary for you to investigate what the person who gave the letter of introduction knew about Dutton, if anything, or whether Dutton had deceived that person?

A. I thought the fact that Mrs. Mussey had a letter of introduction from one of the best friends her husband ever had, being the lady that she is, gave Dutton sufficient standing in this community to be dealt with, and I took everything else on faith, as represented by Mrs. Mussey.

Q. And you did not think it was necessary to make any inquiry as to whether Dutton had deceived the person from whom he brought the letter of introduction or even whether that letter of introduction gave him even a good character?

Mr. DARLINGTON: I object. The witness has said he heard the letter read.

By Mr. KEANE:

Q. Did you hear the letter of introduction read?

A. Yes, sir.

Q. Then you knew that the letter did not even give him a good character?

A. It did not give him a bad one.

Q. It did not give him any character at all.

A. It did not give him a bad one. I heard the letter day before yesterday; that does not cut any ice here. Your question is so hypothetical that I will have to answer it in a hypothetical way.

Mr. DARLINGTON: I withdraw my objection. I understood the witness to mean he read the letter at the time.

The WITNESS: Suppose a lady——

Mr. KEANE: I would like you to answer my question.

A. I told you I would answer the question if you would allow me to answer it in the same hypothetical manner you have asked it.

(Question repeated.)

A. No.

Q. And you learned nothing from Mrs. Mussey, except the bald fact that Dutton was introduced to her by a letter——

A. From one of the best friends her husband ever had. She did not even give me his name.

Q. And you did not inquire even whether the person who gave this letter had spoken favorably of Dutton or not?

A. I took that for granted, because when I asked the question of Mrs. Mussey, "Why do you erase my 15 days and put in 5 days?" is when she told me that a man had a judgment against him in New York, and if it were not settled soon it would give him trouble, and I said, "Mrs. Mussey, is this right?" She says, "He comes to me with a letter of introduction from one of the best friends my husband ever had in New York."

Q. Why do you make it singular? Did you not swear in your answer that Mrs. Mussey told you this man had judgments against him?

A. I have sworn to things so many times that perhaps I
1120 have fallen into the habit, which is a fault. You ask me to swear to things over and over again.

Q. But you swore in your answer that this man had judgments against him in New York?

A. I may have said judgments or judgment. I do not know which. She admitted on the stand it was judgments. I might have said judgments.

Q. What you were thinking of was the bargain you were getting, was it not?

A. I expect that cut a little ice in it. Of course, I wanted everything straight and square. I did not want a bargain that was not a bargain with honor. I wanted a straight and clean-cut transaction,

which I thought we got, and we took sufficient precautions to get and did get.

Q. If you had been as anxious to learn whether Dutton was not disposing of this property in such great haste with these judgments hanging over him in order to defraud this complainant or his judgment creditors as you were to get the bargain that Mrs. Mussey was offering, do you not think you might have made diligent inquiry to learn something definite about Dutton's character and antecedents and cause of his great haste?

A. I deny the insinuation that there was not due precaution taken, and I repeat that if Miss Godfrey had taken as much precaution to ascertain something of Dutton as we did, this trouble among ourselves would not have arisen.

Q. If Miss Godfrey had got property at a bargain, the title to which she had taken in the name of a dummy, and concealed her connection with the same, and were trying to defend that title against some innocent person or creditor, her position might be then somewhat similar to yours, but there are no such elements in her case at all. Now, I ask the question, Do you consider that a man of ordinary and reasonable prudence who had had property on his books for sale for $55,000, which a stranger who has a judgment debtor claimed to have just acquired for $65,000, and was willing immediately to part with in great haste for $25,000, would have made no inquiries and have thought there was no occasion for inquiries before purchasing the same from the judgment debtor, especially after a friend had advised him that the property was worth $50,000?

A. In the first place, I never considered John B. Wight an expert in valuing real estate, and if he had told me it was worth $60,000 it would have been all the same to me.

Q. You thought he was a sufficient expert to consult his opinion about the value of that property, did you not?

A. I did not consult his opinion. That transaction was made and the deposit acknowledged and the contract signed before I ever consulted him about it at all.

Q. There was no conveyance yet, was there?

A. No; I merely told him of the transaction; told him of a fact and did not consult him as an expert.

Q. Is not the idea of a contract of sale for the very purpose of giving the proposed purchaser an opportunity to look into the title?

A. Yes; and we wanted 15 days and they would only give us 5.

1121 Q. Because there was such great haste?

A. We were not in haste. Your friends in New York were the hasty ones.

Q. The hasty person was the judgment debtor, was he not?

A. Mr. Warner and I were not in haste at all.

Q. The judgment debtor was in haste, was he not?

A. I imagine so; he never told me so.

At 6 o'clock p. m. the further taking of these depositions was ad-

journed to Mr. Darlington's office, No. 410 Fifth street northwest, at 1 o'clock p. m., Thursday, June 9th, 1898.

LOUIS D. WINE resumed the stand for further cross-examination.

By Mr. KEANE:

Q. When you take a bargain from a judgment debtor, with judgments hanging over him in another State, in great haste to dispose of his property, do you not know you do so at your own risk?

A. I was not aware of it.

Q. Where the property was obtained by fraud by the judgment debtor from whom you took it, knowing of his great haste and that he had just acquired the property and of the judgments over him in another State, did you not know that you took with your bargain the risk of his having obtained the property fraudulently?

A. I had no idea that he had obtained the property fraudulently.

Q. You knew, did you not, that Mrs. Mussey was a lawyer?

A. I did.

Q. You knew also, did you not, and have so sworn in your affidavit, that she represented Dutton as his attorney?

A. Yes.

Q. You knew, therefore, did you not, that "the best friend that Mrs. Mussey's husband ever had" was sending business to her in giving Dutton a letter of introduction to her to represent him as her attorney?

A. The circumstances seemed to indicate it.

Q. As you knew that Mrs. Mussey was representing Dutton as his attorney, you naturally concluded, did you not, she was taking care of his interests?

A. I imagine an attorney would do that.

Q. You would not go to a man's attorney, would you, to find out things about his character, knowing that the relation was confidential and his attorney's lips were sealed as to his client's communications?

A. I would believe any communication Mrs. Mussey made to me.

Q. Do you think that is an answer to my question?

A. Yes.

Question repeated.

A. I will leave the answer as it is. I will take Mrs. Mussey's word for anything.

Q. I will get an answer to that question. You only compel me to prolong this examination.

A. All right; I can stand it if you can.

Q. Knowing that the relation between a lawyer and his client is a confidential one, and that the lawyer's lips are sealed as to communications received from his client, if you wanted to find
1122 out anything, if there was anything detrimental against the man's character, do you think, as an intelligent man, you would seek such information from his attorney?

A. Taking Mrs. Mussey as an example of an attorney, I would seek information from her, and believe she would tell me the honest truth.

Q. Do you not know that that is not an answer to my question, or is it that you cannot comprehend the question? Is it that your comprehension is as weak as your memory?

A. I will leave that to you to judge. You put a hypothetical question about a whole lot of attorneys or a particular attorney——

Mr. KEANE: There is no question on this record to be answered. I submit this disorderly conduct shall stop.

Mr. WARNER: You sit down and behave yourself and it will stop.

Mr. KEANE: I do not propose to take any impudence from Mr. Warner.

Mr. WARNER: I am not giving you any.

Mr. DARLINGTON (to the witness): Do not allow yourself to be broken off in this manner.

The WITNESS: You do not state any particular attorney and I cannot answer in a general way. There are attorneys in the world that I would not trust out of my sight.

Q. My question is whether as an intelligent man you would consider that an attorney would be at liberty to communicate to you facts which she had obtained in a confidential capacity.

A. I believe, as honestly as I believe I am living, that if Mrs. Mussey had known anything crooked about this transaction she would never have brought it to me to handle.

Q. Do you not know that is not an answer to my question?

A. That is as near as I can answer it.

Q. If you will persist in answering questions which you yourself invent or imagine and stubbornly refuse to answer my questions, will you explain what your motive is in adopting that method?

A. It is the privilege of an attorney not on oath to ask any kind of a question he pleases; it is my privilege as a witness, as I understand, to answer that question to the best of my knowledge and belief and answer it under oath, as I would be willing to answer to my God and not to you.

Q. Do you decline to give a direct and responsive answer to my questions?

A. I am giving the best answers I can.

Q. Can you not understand the questions?

A. I think I understand the questions, but that is a hypothetical question. You include all the attorneys in the country and do not specify any particular attorney, and I answered it that I would believe Mrs. Mussey in anything she would say.

Q. I did not ask you any such question as that and you know it.

A. I do not know it.

Q. (To the examiner:) Then read my question to the witness and let him see that I do not ask him any such question.

1123 Question repeated.

A. That is enough. Is not that a general question about any lawyer? You do not say about Mrs. Mussey.

Q. Why, then, do you drag Mrs. Mussey in this?

A. Because she is the one I am dealing with.

Q. You are obliged to answer my question on the witness stand, and if the questions are not proper your lawyer will take exception to them and the court will rule upon that at the proper time.

Mr. DARLINGTON: I do object to them.

Mr. KEANE: The court will rule on them. I cannot proceed now; this is a farce.

Mr. DARLINGTON: I object because it does not put any question whatever. It puts a hypothetical question in no way connected with the case, and, furthermore, involves that it is the duty of an attorney to do acts which should lead to disbarment, if not his criminal prosecution, if by the question is implied that an attorney applied to, as Mrs. Mussey was in this instance, should conceal knowledge of the transaction.

Mr. KEANE: Your attorney having entered on the record an objection, will you proceed to answer my question directly and responsively?

A. I answered your question before—that any statement made to me by Mrs. General Mussey I would believe to be true, nor do I believe that Mrs. Mussey would deceive me in any way.

Mr. KEANE: This witness is a new experience to me. I have never before had a witness to deal with who would refuse to answer questions.

Q. Will you see if you can answer the question in this way: Is it your ordinary habit to go to a man's attorney to find out things detrimental to his character?

A. I was not looking for anything detrimental to anybody's character when I asked Mrs. Mussey this question.

Q. Can you not answer me whether or not it is your habit to go to a man's attorney to find out things detrimental to his character?

A. It would depend entirely upon circumstances.

Q. Is it your habit to do so? Answer yes or no.

A. I never had brought before me before——

Q. (Interposing.) Do you not know that Mrs. Mussey has testified in this case that she aided Dutton to dispose of this property, concealing from his creditors' attorney that it was a sale, and knowing that his creditors' attorney believed it was a loan?

A. I do not think I know that. I think she answered some of your questions that some of the conditions of the sale were a matter between attorney and client.

Q. You do not know that?

A. I do not know that she intended anything to deceive anybody.

Q. Have you read her testimony?

A. I heard her direct testimony.

1124 Q. There is nothing the matter with your comprehension, is there?

A. I will leave that to you to judge.

Q. Do you ordinarily have any difficulty in understanding plain English?

A. I will leave that to you to judge.

Q. Do you not think that reasonable and ordinary prudence would have required of you to make diligent investigation or inquiry about Dutton when even his own attorney, who was looking after his interests, to whom he had come with a letter of introduction from the best friend her husband ever had, was willing to admit to you that Dutton was in great haste to dispose of this property, and had judgments hanging over him in New York?

A. I cannot conceive of anybody more appropriate to give me that information than Mrs. Mussey, who brought the property to me. If I had on that day, I presume, written to Mrs. Godfrey or Miss Godfrey for information relating to the property, they would have told me that the property had been sold.

(It is hereby stipulated between counsel that defendants will have ten days' extension of time beyond the time limited, and if then by due diligence they are not then through, counsel will agree upon further and reasonable extension, or an application to the court, if they cannot agree, counsel for defendants stating that they hardly think they will be able to complete their testimony in a session of ten days.)

(Question repeated.)

Mr. KEANE: The only question is whether, those facts being brought to your attention, you would consider that ordinary and reasonable prudence would have required you to make reasonable investigation or not, and it can be answered yes or no.

The last answer of the witness was then read.

Mr. KEANE: I move that that answer be stricken out as not responsive to the question.

Q. Now will you try to answer the question?

A. If Mrs. Mussey were the attorney in the case, I would consider her testimony sufficient to justify me to take that step.

Mr. KEANE: I move that that be stricken out as not responsive.

Q. Can you not understand a simple question that is asked you so as to give a responsive answer to it? This is a farce to put questions to you that you will not answer. If you intentionally evade answering them——

The WITNESS (interposing): I am not intentionally evading answering anything.

Q. Do you answer them simply because you cannot comprehend them?

A. I will leave that to you to judge.

Q. I must have my question answered. I cannot conduct a farcical examination, which this certainly is if witness will not answer questions.

A. Perhaps I do not understand the question. I understand you to mean this, if you will allow me.

1125 Mr. KEANE: I cannot help you if you do not understand English.

Mr. MATTINGLY: State what you understand the question to mean.

The WITNESS: I understand the question to mean whether Mrs. Mussey, as an attorney for Dutton, was a proper person for me to apply to for information in relation to the sale of this property.

Mr. KEANE: There is no such question. The question is whether you think that reasonable and ordinary prudence would or would not have required you to make investigation, knowing the facts stated in the question.

A. No.

Q. That is an answer to the question, but it took a long while to get you to make it.

The WITNESS: It takes a long while to straighten out your questions.

Mr. KEANE: I cannot help you if you do not understand English or will not understand it.

Q. So that the fact, namely, that Dutton was a judgment debtor hastily trying to dispose of property in a foreign State which he claimed to have just acquired for $65,000 and was willing immediately to part with in great haste for $25,000, less commissions, and which you had had upon your books for sale for $55,000, all seemed to you insignificant and of no consequence when you learned of that letter of introduction from the best friend that Mrs. Mussey's husband ever had, and you felt that there was no risk in taking the bargain; is that so?

A. I felt there was no risk.

Q. And when you swore in answer to the eleventh additional interrogatory that you made no inquiries about Dutton because you knew of "no occasion for such inquiries," you considered that your discovery that Dutton had got a bald business letter of five lines, saying nothing of his character *to* a lawyer, from the best friend her husband ever had, simply stating that Dutton might want some advice or information in regard to a matter of real-estate business in connection with some property in Washington, that there then ceased to be any occasion for inquiry on your part before seizing the bargain which the judgment debtor's haste to dispose of his property placed within your grasp; is that so?

A. If you are looking for a man to answer that half page either yes or no, I admit that I have not intelligence enough to answer it.

Q. That is the best answer you can make?

A. That is the best answer I can make.

Q. You have sworn in your answer on pages 4 and 5 that on April 10, 1896, Mrs. Mussey said to Mr. Warner that she had those lots for sale, and that he referred her to you, and that she then stated to you that she was acting as the attorney for one Stephen A. Dutton, of New York, who had several judgments against him in that city, and that he desired to make an immediate sale of said

lots, which he was willing to sell for $25,000, less three per
1126 cent. commission, and that thereupon, after some conference between you and Mr. Warner, you both agreed together to purchase said property at the price named and agreed that the title should be conveyed to Louis W. Richardson, and as the result of said negotiation and agreement the contract to sell was entered into. Do you intend to say now in contradiction of your answer that Mrs. Mussey did not state to you that she was acting as the attorney for Stephen A. Dutton, of New York, who had several judgments against him, until after the execution of the contract of sale?

A. Now, that contains about a dozen questions. Do you want me to answer them just yes or no.

Q. I have recalled to you in a few words what you swore to in your answer. Having recalled that to your mind to refresh your recollection, I merely ask you the question whether or not, bearing in mind what you testify or rather what you swore to in your answer, you intend to say now in contradiction of that, that Mrs. Mussey did not state to you that she was acting as the attorney for one Stephen A. Dutton, of New York, who had several judgments against him, until after the execution of the contract of sale.

A. I stated in my direct testimony yesterday morning that Mrs. Mussey stated to me about three or four o'clock in the afternoon, when I left, after I had left the contract either with her to execute or have executed, when it came back fifteen days had been erased and five days inserted, and I went back to her to know why they wanted it done so quickly. Her answer was that the owner of the property had judgment or judgments against him in New York, which, if they were not attended to early, would give him trouble. You know I stated that.

Q. And I have shown you by quoting from your answer that that is in direct contradiction of what your answer states, and I ask you fairly, bringing that to your mind, whether you wish to adhere to that statement in contradiction of your answer.

A. The execution of a contract and the delivery of property are two separate and distinct things, and if I had found out from Mrs. Mussey after that contract was signed that any rascality was being practiced by anybody I would have said the contract is of no good.

Mr. KEANE: Nobody is asking you any such question.

Mr. DARLINGTON: That was not the question asked. Let the examiner read the question.

The question was read to the witness.

A. She never told me she was acting as the attorney of Stephen A. Dutton. The first I knew he had anything to do with it was when the contract came back signed by him, and as an evidence that I did not know it the contract of the party of the first part is left blank and is blank today.

Q. And that was after the execution of the contract of sale?

A. That was after the execution of the contract of sale.

Q. And therefore your answer was false, was it not, where
1127 you stated as follows: That on April 10, 1896, Mrs. Mussey stated to Mr. Warner that she had those lots for sale?

A. Did I state that? Was that my answer?

Q. (Continuing:) And that he referred her to you, and that she then stated to you that she was acting as attorney for Stephen A. Dutton, of New York, who had several judgments against him in that city, and that he desired to make an immediate sale of said lots, which he was willing to sell for $25,000, less three per cent. commission, and thereupon, after some conversation between you and Mr. Warner, you both agreed together to purchase said property at the price named, and agreed that the title should be conveyed to Louis W. Richardson, and, as the result of said negotiation and sale, the contract to sell was entered into. That is all false, is it not?

A. Not a word of it false. That contract and that conversation all took place on the 10th day of April.

Q. Do you also intend to say in contradiction of your answer that Mr. Warner did not consent to join you in the purchase of the lots until after the execution of the contract of sale?

A. That is right.

Q. Therefore, when you state the contrary of that in your answer, your answer is false?

A. My answer is not false. The whole thing was done the 10th day of April.

Q. If your answer states the contrary of that, it is false?

A. My answer is not false in any particular.

Q. If it states the contrary of that, it is false, is it not?

A. My answer is not false in any particular.

Q. Even though it states the contrary of what you now testify, it is not false? Both things are true, anyhow, are they not?

A. I have stated no falsehood.

Q. Do you not know that the statement in the answer of yours and Mr. Warner is absolutely false where you both swear that you and Mr. Warner agreed to purchase that property together?

A. It is not false.

Q. Did you tell Mr. Wight an untruth when you had the conversation with him to which he testified in this case, which I now read to you from his testimony, as follows:

(Page 30, 12th line from foot of page:) "As nearly as I can recollect that point of the conversation, Mr. Wine said that, Mr. Warner not having made up his mind by the time the purchase had to be made, he (meaning Wine) decided to buy it himself, but afterwards Mr. Warner wanted to come in as a half owner in the property, and he (meaning Mr. Wine) felt that he ought not to admit him as such, having assumed the responsibility to purchase himself, but offered to sell him (meaning Mr. Warner) a half interest, as he would to any outside person."

Is that true or false?

A. Mr. Wight was simply mistaken in the conversation.

Q. That is all?

A. Do you want me — state what the conversation was?

Q. You have answered my question. I am satisfied with Mr.

Wight's testimony, and it is sufficient that you contradict it.

1128 Have you no knowledge of any special reason that Mr. Warner had for any hesitancy at first to snap up this property that Dutton was disposing of in such haste to you?

A. I have no knowledge at all.

Q. Have you no knowledge of any special reason that Mr. Warner had for keeping in the background and not meeting Stephen A. Dutton?

A. I never knew he had a reason at all for it. I do not know that he knew Stephen A. Dutton.

Q. When was it you applied to the Farmers' and Mechanics' bank to discount that note for $7,200 made by you and endorsed by Mr. Warner?

A. I do not remember the exact date; it was about the time of this transaction, and it was done for the purpose of getting money to pay the cash price on this property.

Q. Did you make any effort to borrow money from any person or corporation before you applied to the Farmers' and Mechanics' bank?

A. Never, to my knowledge. I never was turned down about a discount that I ever asked of any bank that I remember.

Q. You were determined that the bargain offered you in the property should not be lost so long as you could borrow money to pay for the price?

A. I knew where I could get the means to pay for the price.

Q. When this note of $7,200 fell due in two months, instead of taking it up in the sense of paying back the borrowed money, what you did was simply to substitute a new note in its place, adding the interest to it of $75.76; is not that true?

A. Almost any man——

Q. (Interposing.) Is not that true?

A. Most any business man of any business experience would call that note paid; we absolutely paid that note.

Q. Can you not answer that question?

Question repeated.

A. Adding the interest to the old note; I think that is not true.

Q. You do not think that is what you did? If Mr. Berry, the cashier of the bank, has testified that that is what you did do, you say that his testimony is false?

A. I never go back on the record of the Farmers' and Mechanics' bank.

Q. What do you think was true?

A. That that note was paid, and on the same day we had a new note discounted for a less amount; that is my recollection; I do not swear to that positively, but that is my recollection of the transaction.

Q. The testimony of Mr. Berry, already given, will show the fact. Did you not say, in answer to the thirty-second interrogatory in the bill of discovery, relating to your first note of $7,200, that it was taken up and destroyed?

A. I did; I think—at least I thought it was destroyed; I could not find it among my papers.

Q. And you have never been able to find it since, have you?

A. No, sir; it was my custom to destroy notes of that kind.

Q. Have I asked you what your custom was?

A. I thought you might want to know.

1129 Q. Will you confine yourself to my question?

A. I will take that back; obliterate it.

Q. What was your motive in concealing that you had not paid any part of that note of $7,200 when it matured, but simply substituted a new note for it, including the interest?

A. I had no motive in the world; it was a matter between me and the bank; no material interest to Mrs. Godfrey or anybody in the world.

Q. Can you not answer my question without going along and making a lot of statements that the question does not call for? You continued in this way, did you not, every few months to substitute new notes until over a year and six months had elapsed, when, on October 30, 1897, your note, which amounted then to $5,600, fell due, with $84 interest, when this transaction with the bank was dropped or closed up; is not that true?

A. I took no memorandum of those dates of the note, but whatever the Farmers' and Mechanics' bank states is true in that case, and I accept it as true.

Q. It required a great deal of financing, did it not, on your part to enable you to get the funds to secure this bargain, so suddenly offered you and seized by you with a promptness exceeded only by the judgment debtor's haste in disposing of his property?

A. Not at all; my credit with the Farmers' and Mechanics' bank, as I always understood it and appreciate it, has been unquestioned; they never question me when I want——

Q. Do you think there is any point of that kind involved in my question?

A. Yes; you say it required very particular financiering. If I had gone and asked them for $40,000 I would have gotten it.

Q. What conversation did you have with Mr. Warner at the time of the making and endorsement of the first of this series of notes?

A. I suppose we told him we could get the money out of bank. I do not think I named any particular bank, because we could have gotten it out of any bank in the city. I do not remember the particular conversation. Mr. Warner has endorsed for me many times, and I have endorsed for him.

Q. Have I asked you that?

A. Strike it out if you do not want it there.

Mr. KEANE: It is farcical for you to go on in this way.

The WITNESS: It is farcical for you, too, I think.

Mr. KEANE: I am simply doing my duty in asking you questions, and it is your duty to answer them responsively.

The WITNESS: It is my duty between myself and God——

Mr. KEANE: Your duty between yourself and God and the court

is to answer questions responsively, and to stop when you have answered those questions. I have never had in my experience such an extraordinary witness before.

Q. Can you state when you had your conversation with Mr. Warner in regard to the making and endorsement of the first of this series of notes?

A. I think it was the morning we closed the transaction. I do not know whether it was that morning or not.

Q. Can you not state positively whether it was on the 10th, the 11th, or the 13th?

A. I cannot state positively.

1130 Q. Of April, 1896?

A. I cannot state positively. We had sufficient money in bank to settle up this matter.

Q. Has any such question been asked you?

A. I thought you wanted——

Q. You do not deny, do you, the fact of the execution of the contract of sale of April 10, 1896, which has been produced here in evidence?

A. Oh, no.

Q. You admit that?

A. Yes.

Q. Is not the statement, then, in your answer false, page 6 (ninth line from the foot of page), where you swear that Dutton did not on the 10th day of April, 1896, or at any other time, at the office of B. H. Warner & Company, or at any other place, ever sign any paper-writing or contract in relation to the said sale other than the deed of conveyance to the defendant Richardson?

Mr. DARLINGTON: Objected to because the context of the answer clearly shows that no reference was made to the paper now in question.

Mr. KEANE: I think the context of the answer very clearly shows that it is an absolute denial of that fact.

Mr. MATTINGLY: Let the stenographer read that from the answer.

(Mr. Keane here handed the witness the paragraph referred to.)

"Further answering the said paragraph, these defendants specifically deny that the defendant Dutton, on or about the 10th day of April, 1896, or at any other time, ever came to the office of B. H. Warner & Company or at any other time and place known to these defendants ever signed any paper-writing or contract in relation to the said sale."

Q. Can you answer that question?

A. If you will give me a little time. We had no personal knowledge of it; we had the paper signed and witnessed.

Q. Will you explain why you gave Dutton two checks, one for $4,000 and the other for $2,026.67, instead of one check to include both sums?

A. We turned the papers over to the Columbia Title Insurance

Company, and told him to make the distribution. I kept no memorandum of that. That, I think, was fully explained by Mrs. Mussey.

Q. You do not know why the two checks were given instead of one?

A. I paid no attention to that.

Q. And you have no knowledge of why that was done?

A. I have not the remotest; I do not know what the motives were at all.

Redirect examination.

By Mr. DARLINGTON:

Q. You say Mr. Wight's recollection is somewhat at fault as to the conversation you had with him, referred to in your cross-examination. You can now state, if you desire, in what respect he is at fault.

A. I do not think he was very faulty.

1131 Q. Just tell us in what respect.

A. In this respect: While in conversation with Mr. Wight that evening on his steps—it was merely a social call, however; I had no intention of calling on him, but as I passed I happened to find him on his steps, and what he swore to was substantially true.

Q. I am only asking you now in respect to which your recollection differs.

A. I told him about Mr. Warner and I having bought the property. I told him I had bought it first, and then Mr. Warner was so indifferent about going in with me in the morning when we first talked about buying it that I had a notion not to let him into it, and that was all after the contract was made.

Q. What, if anything, did you say to Mr. Wight about your allowing Mr. Warner to come in or your offering to allow him to come in as a stranger in this transaction?

A. I did not say anything to him about a stranger at all, if I remember.

Question repeated.

A. I do not think the word "stranger" was ever used. The conversation was more playful than earnest in that respect.

Q. What, if anything, did you say about your offering or thinking about offering to let Mr. Warner come in as a stranger or third person?

Mr. KEANE: Objected to as leading.

A. I do not think the word "stranger" was ever used at all.

Q. What did you say in regard to the matter I asked you about, whether the word "stranger" was used or not?

A. I said I had offered Mr. Warner the property himself. He had declined to buy it, and I had bought it during the day myself and had the agreement made between my nephew and myself, and at 5 o'clock on that evening I had let Mr. Warner into the transaction, and I said I hesitated a little while before I did it. That is about in substance what was said.

Q. When did you first meet or hear of this Czaki that has been mentioned in this testimony?

A. I think ten days or two weeks, perhaps, after this settlement was made; after the purchase of the property was made.

Q. What notice or suggestion of any fraud on the part of Dutton in this sale did you have, or what suspicion of fraud at the time you purchased it?

Mr. KEANE: Objected to as incompetent and leading and suggestive.

A. I had no suspicion of any fraud. The first intimation I had of anything of the kind was imparted to me by Mr. Czaki.

Q. You have stated that this property was intrusted to your firm for sale in October, 1893. Can you tell us how many pieces of property were on your books at that time?

Mr. KEANE: Objected to as irrelevant and immaterial and as not proper redirect examination. I move that it and the answer be stricken out.

1132 A. I really could not tell you the exact amount; a great number of pieces of property.

Q. Are you able to approximate it?

Mr. KEANE: Objected to for the same reason, and I make the same motion.

A. I should say 1,000 or 2,000 pieces, or somewhere about there.

Q. Between October, 1893, and April, 1896, can you give us any approximation as to the number of pieces of property which were in your office for sale?

A. It would be a guess. I should say between one and three thousand.

Mr. KEANE: Same objection and same motion.

Q. You were asked whether Mr. Warner did not come up and join in the conversation when Mrs. Godfrey placed this property in your hands. What is your best recollection on that subject?

A. I do not think he did at all; I do not remember that he did.

Q. You have been interrogated in regard to Exhibit L. D. W. No. 1 being a fly-leaf of your sales bulletin. Will you please tell us whether the property in question was included in that sale bulletin?

A. I could not assert positively in that particular bulletin. I could not tell.

Q. Where is that bulletin?

A. The bulletin that was exhibited last night; the property is not in that. The fly-leaf that was furnished in evidence the other day——

Q. (Interposing.) Came out of that book, did it not—the one you were interrogated about?

A. No.

Q. Where is the paper that was shown you yesterday, that you were interrogated about, which was filed as Exhibit L. D. W. No. 1?
A. Here it is. The closing clause there is what I suppose is referred to.

Mr. DARLINGTON: I now offer in evidence the bulletin itself, unless it can be agreed that the property in question is not included in the sales bulletin to which this is attached.
Mr. KEANE: There is no contention of that sort. It is very far-fetched.

By Mr. DARLINGTON:

Q. Do you know when this sales bulletin was published? I mean the one Exhibit L. D. W. No. 1. If you have any knowledge, say so; if not, say so.
A. February, 1896.
Q. On what does that knowledge rest?
A. An examination of our books by one of our clerks, who reported that fact to me.
Q. Who is that clerk?
A. T. C. Dodge.

Mr. DARLINGTON: That is all.
Mr. KEANE: I move that all that be stricken out as hearsay and incompetent; also irrelevant and immaterial.

LOUIS D. WINE.

1133 Sworn to and subscribed before me this 8th day of June, A. D. 1898.

ROB'T L. MILLER,
Examiner in Chancery.

CLARENCE B. RHEEM, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined, and testified as follows:

By Mr. DARLINGTON:

Q. Please state your full name, place of residence, and occupation?
A. Clarence B. Rheem; Washington, D. C.; real-estate business.
Q. Are you a member of any firm?
A. I am a member of the firm of B. H. Warner & Company.
Q. How long have you been a member of that firm?
A. Since April, 1895.
Q. What is your department in that firm of business, and what was your department in that firm's business in 1897 and down to the present time?
A. I have been in charge of the loans department and in general charge of all of the details of the office—detail work.
Q. Were you applied to at any time, in connection with this pending suit, to ascertain or to furnish data as to the payment of interest on the first incumbrances on this property, corner New Hampshire avenue and Q street?

A. Yes, sir; I have been.

Q. By whom?

A. By Mr. Warner and Mr. Wine.

Q. State the circumstances.

A. At the time that they made their answer to some supplemental bill in this case they came to me to ask whether the interest had been paid on certain loans existing against the property, and I reported that all interest due at that time had been paid. That was in the early part of 1897.

Q. Upon what did you base that report?

A. I had referred to our books and ascertained that the last instalment of interest in each case had been paid, and that we had a receipt covering the same.

Q. To whom did you make this report?

A. I reported to Mr. Warner and Mr. Wine.

Q. What did you report to them?

A. That the interest had been paid up to date.

Q. By whom?

A. By our office.

Q. When was the matter next brought to your attention and how?

A. The matter was brought to my attention, I think, in January of this year—January or February of this year. I have forgotten now which.

Q. In what way?

A. I think it was reported to me that I had made a mistake; that it had been discovered that we did not pay the interest due on the first instalment of interest due—due the Provident Life and Trust Company—after Mr. Warner and Mr. Wine became the owners of the property.

1134 Q. Were you at any time requested to get the checks together by which this interest was paid?

A. I was at that time.

Q. What did you do?

A. I ascertained it was true; we had not paid the interest due, I think, in May, 1896.

Q. What were the earliest payments which you made on account of the property in question?

A. The earliest payments were made respectively—one for $105.00, paid to Thomas J. Fisher and Company June 25, 1896; one for $120.00, paid September 19, 1896.

Q. Do you know on what encumbrances these interest payments were made?

A. The check for $105—the interest amounted to $105—was paid on an encumbrance of $3,500, the holders of which were represented by Thomas J. Fisher & Company, and the check for $120 was to pay the interest on the loan of $4,000, the holders of which were represented by Deeble, Davis & Company.

Q. Do you know who are the holders of these two encumbrances?

A. I do not.

Q. Then, if I understand you, were the encumbrances on the property at the time of the purchase?

A. They were encumbrances assumed by the purchaser.

Q. Can you tell us why you paid those interest charges and did not pay the interest due to the Philadelphia parties?

A. I think so. When this property was purchased the papers were turned over to me, and the business of the office requires that I shall look after all such matters. I filed the papers away and depended entirely upon the receipt of notice for the payment of this interest. We do that in every case.

Q. And what interest notice came to you for this first instalment of interest fallen due?

A. Thomas J. Fisher & Company sent their note up to the office for the payment of their interest, and Deeble, Davis & Company sent us a notice of the interest due them.

Q. How about these Philadelphia parties, the Provident Life and Trust Company?

A. We received no notice from them at all until late in the fall.

Mr. DARLINGTON: I now offer in evidence the two checks which have been referred to.

(The same are marked respectively Exhibits C. B. R. Nos. 1 and 2, the originals of which will be produced at the trial if desired.)

Q. Do you know the signature of Thomas J. Fisher & Company?

A. I have seen it frequently.

Mr. KEANE: There being no dispute about the payments referred to in these checks, their admission in evidence would be simply unnecessarily lumbering up the record, and I cannot see for what purpose they should be introduced.

Mr. DARLINGTON: In that view I will not offer them.

Q. Did you ever see Allen A. Dutton?

A. He was pointed out to me in the office of Judge Wilson on one occasion.

1135–1145 Q. Where was he at the time you saw him?

A. He was in the witness chair.

Q. How did you happen to be there?

A. I was asked to go there for the purpose of identifying him.

Q. Please tell us whether you were then able to recognize him as a man you had ever seen before.

A. I had never seen him before, to my knowledge.

Q. Mr. Allen Dutton testified that the latter part of August or early part of September, 1895, he was in the office of B. H. Warner & Company. Do you recall ever having seen him there at or near that time?

A. No, sir.

Q. He testified at that time that B. H. Warner sent one of his employees out to this property in controversy to show it to Dutton; that the man so sent was a tall slim man, gray-haired, gray beard, and older than Dutton, who gave his own age as being 55 years. Please state what person you had answering that description, if

any was in the employ of B. H. Warner, at that time or in his office.

A. I remember of no employee answering that description for the past ten years, or since I have been in the office.

Q. Who, in August or September, 1895, was the oldest employee of the firm?

A. I think Mr. Luther Swartzell.

Q. What is his age?

A. I should judge about 37 or 38.

Q. Is he gray?

A. Very slightly.

Q. Is he slim?

A. Not at all.

Q. Had you any person in any way answering this description in your office at that time?

A. No, sir.

Q. What familiarity have you with the correspondence of the firm?

A. With reference to the loan department, and largely with the sales department; it goes through my hands.

Q. This same Allen A. Dutton says he received three letters from your firm, one written about a proposed loan, and the other two signed by one of the Swartzells, relating to some matter that he cannot remember. State if you know of any correspondence or ever had any correspondence with Dutton.

A. None whatever.

Q. Mr. Dutton claimed that a Mr. Sturtevant was also present with him at the office of B. H. Warner & Company at the time I have indicated. Do you recall the presence of such a person?

A. I am certainly unable to recall the presence of such a person.

CLARENCE B. RHEEM.

No cross-examination.

ROB'T L. MILLER, *Examiner.*

* * * * * * *

1146 EDWARD H. THOMAS, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testifies as follows:

By Mr. MATTINGLY:

Q. Please state your fuil name.

A. Edward H. Thomas.

Q. State what your profession is.

A. I am a member of the bar of the supreme court of the District of Columbia.

Q. How long have you been such?

A. Since May, 1877.

Q. You appeared as counsel for the defendant Richardson in this case?

A. Yes, sir.

Q. Did you prepare and file his answer?

A. Yes, sir.

Q. At the time of preparing the answer were you aware of the fact that he was simply the nominal holder of the property involved in Mr. Warner's name?

A. Yes, sir.

Q. Now, state in your own way the circumstances attending the preparation of the answer by you and all that transpired.

Mr. KEANE: Objected to on the ground that it is immaterial and irrelevant.

The WITNESS: I would like to ask you whether it would transgress any rule of professional propriety in my making a statement of that kind.

Mr. MATTINGLY: I do not think so, under the circumstances of this case.

The WITNESS: Very well. I will rely upon your judgment in that regard.

Mr. MATTINGLY: Mr. Wine has already testified as to what took place.

A. My recollection is that Mr. Wine first called my attention to this suit. He came to see me and said there had been some notice in the papers of the suit, and desired me to represent the interest that he had in it. I saw Mr. Blair and told him that I would represent the defendant Richardson.

Q. Please state in this connection who Mr. Blair was and his connection with the case.

1147 Mr. KEANE: I object to the witness stating a conversation had with Mr. Blair.

A. Mr. Blair was the solicitor of record and the one who had filed the original bill in this cause. I told Mr. Blair that I would represent the defendant Richardson and would file his answer or plea, as the case might be. I do not remember exactly what I told him. The substance was that I would appear for him. I paid no attention to the matter for some time, and finally Mr. Blair said that he would like to have the answer in or some defense made, as the parties in New York were pressing him. I then saw Mr. Wine, and Mr. Wine detailed to me the circumstances of the case. I understood from Mr. Wine——

Mr. KEANE: I object to what the witness understood from Mr. Wine as incompetent.

The WITNESS: When I use the word "understood," I use an expression of my meaning of what Mr. Wine said without being able to state the exact words. Mr. Wine said to me, in substance—if the counsel objects to the word "understood"—that Mr. Warner and himself had purchased the equity in this property.

Mr. KEANE: I also object to conversations alleged to have taken place by the witness with Mr. Wine.

The WITNESS (continuing): That Mr. Warner and himself had

purchased the equity in this property, as I understood him, and, as he stated as I recollect, from a man by the name of Dutton, through Mrs. Ellen Mussey; that Mrs. Mussey had brought the property into the office of B. H. Warner & Co. for sale; that he had made an inquiry of Mrs. Mussey in regard to the grantor.

Mr. KEANE: This is all taken subject to objection as incompetent.

The WITNESS (continuing): Mrs. Mussey told him that Dutton had come well recommended from one of the dearest friends that her husband ever had, and had brought a letter from this gentleman whose name I do not recall now, but whose name Mr. Wine stated to me. Mr. Wine stated to me that he had every confidence in Mrs. Mussey, and that they had bought the property and had taken the title in the name of Richardson for the purpose of convenience; had paid the money by check or checks of B. H. Warner & Co. into the Columbia Title Company, and that the Columbia Title Company had settled the matter by giving its checks, examining the title and making a report that the title was good, subject to certain deeds of trust. Mr. Wine also placed in my hands at that time or subsequently, I cannot remember exactly when, the certificate of the title prepared by the Columbia Title Company, the check or checks of B. H. Warner & Co. to the Columbia Title Company, and at that time, or some subsequent time, the checks that the Columbia Title Company had given in payment of the property. Mr. Wine stated to me that the transaction was wholly *bona fide*——

1148 Mr. KEANE: Objection is entered again to this whole testimony of the witness as clearly incompetent and inadmissible.

The WITNESS (continuing):—and honest. I then stated to Mr. Wine, "Mr. Wine, you can defend this action"——

Mr. KEANE: Note an objection to what the witness stated to Mr. Wine as incompetent.

The WITNESS (continuing): "You can defend this action in two ways. You can either disclaim or have Mr. Richardson disclaim his title, and state that he holds it for you and Mr. Warner, or I think you can file a plea that Mr. Richardson is an innocent purchaser for valuable consideration." I may say that the status of the case at that time, as presented by the original bill, simply presented the question as to whether consideration was paid for the property, the bill alleging that the transaction between Dutton and Richardson was without consideration, and therefore the deed was false or fra-dulent.

Mr. KEANE: All the answers of the witness are taken subject to my objection as clearly incompetent, as the witness is not asked any question, but is allowed to run on and narrate at random whatever he chooses to state in the way of whitewashing himself and his clients. It is impossible for me to take objections in the regular way, and, in order not to lose the benefit of the objection, I have been obliged to break in occasionally. I now wish it to be under-

stood, and I here state, that I object to all this testimony of the witness as clearly incompetent, and I shall move to strike the deposition out on that ground at the hearing of the cause.

The WITNESS (continuing): I have no intention of whitewashing anybody or anything. I understand Mr. Mattingly desires me to state what occurred between Mr. Wine and myself, and, notwithstanding the offensive language that is used, I will continue with my narrative.

Mr. KEANE: Which is all taken subject to my objection as incompetent.

The WITNESS (continuing): Mr. Wine stated to me, in reply to my statement to him that Richardson might make his defense by disclaimer and Mr. Warner and Mr. Wine be made parties, setting up their interest in the property, or that a plea or answer might be filed in behalf of Richardson, relying upon the record title as it stood, on the idea that Richardson was an innocent purchaser for a valuable consideration, that he had no objection to the facts being fully known; that he had nothing to conceal in the matter, but that he thought if the bill was filed against Mr. Warner and himself the title examiners and those who searched the records would imagine that they were engaged in some transaction, and he did not like the looks of that; that he had never been in a contested suit but once himself, and that was when he was in the coal business; he had sued a man for a $6 coal bill in order to establish the fact that
1149 he had gotten a ton of coal which he said he had not obtained. I then told Mr. Wine I would look the matter up and let him know; and, on leaving, Mr. Wine said, "Well, I will leave the matter entirely with you and rely entirely upon your judgment in the matter," meaning that I might either make the defense by disclaimer or I might make it by plea or answer, as I was advised, from a legal standpoint, as I understood him. I then made an examination. I must say I did not make an extremely careful examination, but the bill on its face, and from my knowledge of Mr. Wine, stated an impossible case against him. I was thoroughly satisfied that his knowledge in the matter did not extend to any of the matters complained of against him. I could not do otherwise, because to think otherwise would be to think that Mr. Wine was not a reasonably good business man. So I examined and I found a rule in the then existing rules of the supreme court of the District of Columbia, No. 34 of the equity rules, which provided that a defense of an innocent purchaser for a valuable consideration, in such case it would not be necessary to file a plea, but that the defense might be made by answer, and that the defendant's title to any discovery as to him would be as fully protected as it would be by way of plea. I examined Danile's Chancery Practice and one or two other authorities, which satisfied me that only as to material matters was it necessary to advise the other parties, and as it was not necessary in a plea or answer of that kind to set up the consideration down to the time of the very receiving of the deed, and what it was and how

it was obtained, it was my judgment then and is still my opinion under the original bill as presented that it was immaterial as to how Richardson acquired his title or for whom he was trustee or for whom he held, as the case was *lis pendens*. The complainant had a lien on the property by the mere filing of the bill and process, and any relief or remedy that might be wanted could be had in that identical cause against the property. Besides all these facts the relation of Warner and Wine to the property would necessarily come out in the testimony of the cause. To this I understood Mr. Wine did not have the slightest objection. I then prepared the answer without consulting Mr. Wine about it at all, as I had been in the habit of doing in the ordinary cases of trustees under deeds of trust and in mechanics' lien suits and in suits otherwise involving trusts that Warner & Co. had received and negotiated. I did not say anything to Mr. Wine about it. I simply took the papers and sat down at my desk and wrote out the answer just as it is now; that is all my work, every line, every word, syllably, commas, mistakes, and everything else. After I had finished it I sent for Mr. Wine, and he came up with Mr. Richardson and asked me whether it was all right. I told Mr. Wine in the presence of Mr. Richardson, and possibly Mr. Richardson, too, although I do not recall that Mr. Richardson entered into the conversation particularly, that it was perfectly proper; that Mr. Richardson was the owner of the title of record; that a suit was pending tying up the property, and
1150 that the fact that Richardson was trustee for Warner and Wine was nobody's business but theirs; that if he was not a purchaser for valuable consideration under the circumstances stated in the bill he would be defeated; but if his statement to me embodied in the deed to him in the abstract of title and in the check or checks of Warner & Co. and in the checks of the Columbia Title Company were correct that it was immaterial about Dutton's transaction or immaterial about any discovery on his part on account of this rule and on account of the fact that he was the record owner. Now, that is the statement of what occurred.

Mr. MATTINGLY: Mr. Keane, you can cross-examine.

The WITNESS: Mr. Mattingly, do you not want to ask me about my conversations with Judge Wilson?

Mr. MATTINGLY: Yes; you might in this connection state what conversation you had with any other counsel.

Mr. KEANE: I object to conversations as incompetent.

The WITNESS: Some time after this answer was filed, which was filed, as I have intimated, without the service of any process on the part of Mr. Richardson—the exact time or approximate time I cannot recall—I had several conversations with Judge Wilson, some of them in the lunch-room at the city hall, two or three or more in his office.

Q. State what his connection with the case was.

A. At that time Judge Wilson had come into the case and was a solicitor with Mr. Blair for the complainant in the cause. Among the conversations I had with Judge Wilson was one in which Mr.

Wine was present. Mr. Wine and I went up to Judge Wilson's office, and we took with us the abstract of title.

Mr. KEANE: Please note, without interposing any further objections or interrupting the witness, that I object to the whole of this testimony.

The WITNESS: I say we took the certificate of title of the Columbia Title Company to this property. We took the deed to Mr. Richardson, I think. I am not sure about that, but I think so. We took the check or checks of B. H. Warner & Co., and we took the checks of the Columbia Title Company. I went up to Judge Wilson's with the same confidence that I would have gone to see my father about a matter and with the fullest confidence in my stating to him everything that was fair and right. I handed Judge Wilson these checks with the certificate of title, and he looked them over and examined them, and Mr. Wine told Judge Wilson, as I think I had previously told him myself, or certainly subsequently told him a number of times, that Mr. Richardson was his nephew or great-nephew; I do not remember which; that the title to the property had been put in Mr. Richardson as a mere matter of convenience; that the purchase-money had been paid without any knowledge or notice of any kind of the frauds alleged to have been committed by Dutton, and that here was the evidence of the
1151 payment of the purchase-money and of the whole transaction.

Subsequently I saw Judge Wilson and, I think, as I stated previously, in the lunch-room, and our entire talk was not in regard to Mr. Richardson at all. It was in regard to—I do not think he ever mentioned at those conversations anything about Mr. Wine, but our entire talk was whether Mr. Warner might make a settlement of the case. I told Judge Wilson that I thought it was a case where the complainant had probably been imposed upon by Dutton and where Mr. Warner had made the purchase that he did in the utmost good faith. It was simply a question of two innocent parties, which one should suffer—that was all—and that I would advise Mr. Warner to take back the money that he had expended in the transaction, provided the counsel fees for Mr. Warner and Mr. Richardson were paid. Judge Wilson stated on several occasions that he was satisfied the parties would not pay counsel fees; that it was a case that he thought he could settle on the conditions that I mentioned to him. On another occasion in Judge Wilson's office with Mr. Wine——

Mr. KEANE: Won't you try to fix occasions in such chronological positions so that we may know where we stand?

The WITNESS: I cannot possibly do it.

Mr. KEANE: Is there anything the matter with your memory about that?

The WITNESS: No, sir; I really could not; I would be very glad to do it if I could. I think it was very shortly after this second visit of Mr. Wine and myself to Judge Wilson's office. I think it was shortly after our first interview; probably within a week. I told Judge Wilson then, in the presence of Mr. Wine, and I am not sure

whether Mr. Warner was present at all, but certainly in the presence of Mr. Wine, that if they would pay the money that Mr. Wine and Mr. Warner had expended we could settle the suit, and my recollection is that the matter was left with Mr. Wine to see Mr. Warner about. Now, those are the conversations at times. The order in which they occur I am utterly unable to state—the order in which they occurred between Judge Wilson and myself.

Q. Can you recall whether it was before or after the answer of Richardson had been filed?

A. I think it was after the answer had been filed that all these conversations occurred. I had a conversation with Mr. Blair also. I told Mr. Blair I thought he ought to dismiss the case, as I would have done myself, and I told him he could go down to the Columbia Title Company and could find the payment of the money down there, and Mr. Blair said he had already examined the records of the Columbia Title Company and knew that the checks had been paid out by them, but that he could not dismiss the case if he would; that he was controlled by New York parties. Now, after this disclosure to Judge Wilson of the fact about the checks and about the relationship of Mr. Richardson and Mr. Wine there was another bill filed, an amendment of the original bill, in which it was averred in substance, if I recall, the transaction between Warner and Wine
1152 and Richardson and Dutton was a mere loan or mortgage of certain money; that Wraner and Wine pretended to him to advance the money. This allegation was made after the checks had been exhibited and seen. Shall I proceed further with anything else?

Mr. MATTINGLY: Yes; if there is anything else material to the case.

Mr. KEANE: The objection holds as to all this testimony, and I shall move to strike it out.

The WITNESS: There were a number of motions filed in the case for leave to amend the original bill, and a great many delays, as the record will show, and finally Mr. Blair stated to me that it was the intention of the parties representing the interests of the complainant, as I understood him—who they were he did not say—to file a bill which would seriously reflect upon Mr. Warner, and publish its contents in the public press of this city. He made this statement to me just before one of those motions came up—the last one, I think—and in open court before his honor Judge Cox. I called Judge Cox's attention to that statement of Mr. Blair's and told him of the proclaimed intention to make that attack upon Mr. Warner, and he passed an unusual order in consequence requiring the amendment of the bill to be submitted to him before he would allow it—in other words, requiring them to set it up by petition as to what that amendment should be. That amendment resulted in the first amendment to the bill. At the time I made this statement in open court Mr. Blair was present and made no response or statement in reply to my statement of fact. I will say that I did not see Mr. Warner in regard to this case until after I had been informed that it would be claimed that Mr. Richardson was a man seventy-four years of

age, and that Mr. Warner had been present in New York engaged in some scheme with Dutton. I called Mr. Warner's attention to that——

Q. (Interposing.) From whom did you get that information?

A. I got that information from a young man by the name of Czaki. He told me they would prove that Mr. Warner was in New York. I told him they would not be able to prove anything of the kind. I saw Mr. Warner, and he told me not to worry about an impossibility, and he absolutely refused to consider the matter at all. Finally I pressed upon him the necessity of looking into the case, and he did, and employed Mr. Darlington.

Q. Is there anything further?

A. The only thing further I recollect at present is that Mr. Keane, who had been in court with Judge Wilson on one or more occasions, and I think with Mr. Blair also, called me up by telephone one day and asked whether I would agree to meet himself with Mr. Warner and Mr. Wine. I told him I would not. Then he asked over the telephone whether he could not meet them in my office, as that was neutral ground. I told him no, I would not consent to any such meeting in my office, but that we would meet him in the presence of a witness; if he would bring Judge Wilson down that Mr. Warner and Mr. Wine would see him in Mr. Warner's private office. I also recall that Judge Wilson and Mr. Blair came into my
1153 office on one occasion—before the filing, I think, of the first amendment to the bill and after the filing of the answer—to see Mr. Warner in regard to the statement of the case growing out of the statements and propositions I had made to him. Judge Wilson, I recollect, came in with a traveling bag and said he wanted to catch a train. I sent for Mr. Warner, and he said he was going out of town himself, and they postponed the matter and had no further talk than that in the office.

Mr. KEANE: I move that the whole of this deposition be stricken out as wholly incompetent.

Cross-examination.

By Mr. KEANE:

Q. I wish you would fix the exact date, as nearly as you can, of the first meeting which you had with Judge Wilson.

A. It would be an utter impossibility. It was some time after the answer was filed. I have not paid any attention to the matter. I made no memorandum of it. It merely occurred, as other business occurs with me, and I cannot recollect the time.

Q. Have you a fairly good memory?

A. Except for dates. I have a fairly good memory for facts, but I have a very poor memory for faces, names, and dates.

Q. When was the answer filed?

A. I have not the remotest idea.

Q. When was the bill in equity filed?

A. I do not know. I did know some time ago, but permit me to say since I was present at the last examination, as shown by the

record in this case, I have had nothing to do with it. I have paid no attention to it, but have gone on with my other business. I regarded the case as in able hands, and I thought my assistance was not needed.

Q. About when do you think you filed the answer?

A. My best recollection is, although I will not be sure—the record will show—that the answer must have been filed some time in December. Now, whether it was in 1897 or whether it was 1896 I do not know.

Q. So you are unable to state within one year when the answer was filed?

A. I am unable at present to state. I could tell, I suppose, by looking it up.

Q. About how long after the bill in equity do you think it was before the answer was filed?

A. It was several months. My recollection is at present, subject to correction by the record, the bill was filed in September.

Q. But what year you cannot state?

A. No; my impression is it was 1896, and that the answer was filed in 1896, but I am subject to correction by the record on that point.

Q. Do you think that several months afterwards the answer was filed?

A. I am sure of that, because I thought it was a case that would be dismissed without any litigation, and I simply did not pay any attention to it. Mr. Blair got after me about the answer, and
1154 that was the only delay on my part in filing some defense in the cause. I simply laid the papers on my desk without looking at them for some time.

Q. You are oversanguine sometimes, are you not?

A. No, sir. I am the other way. I am cautious, but the fact is, knowing the method of business downstairs, I knew they were not foolish enough to enter into any scheme of that kind. It would not pay. It would not pay any business man.

Q. And the nearest you can fix the date of the filing of the answer, then, would be some time in December, 1896. Is that right?

A. Yes, sir.

Q. Now, about how long after the filing of the answer in December, 1896, was it, do you think, before you had your first interview with Judge Wilson?

A. My belief is it must have been several months. I think it must have been in the following spring.

Q. So that when you had this interview with Judge Wilson you are quite sure the answer had been filed?

A. That is my recollection; yes, sir.

Q. Now, about when was it that you first heard of the conviction of Stephen A. Dutton for defrauding the complainant here of this property?

A. I am unable to recall. My recollection is that I had read about Dutton before I knew anything about this case. I used to take the New York World occasionally, and I saw, I think a con-

siderable time, it must have been some time in the summer, something about the trial of Dutton, and the reason I paid any attention to it was that there was a man who had practiced law here, I forget his name—Fleming—who was named, I think, as counsel. I had known Mr. Fleming, and I wanted to know how Mr. Fleming got into that case.

Q. You wondered how Fleming had got in that case?

A. Yes, sir.

Q. Did you not learn that Mr. Warner had retained him in the case?

A. I never heard it before until you mentioned it now.

Q. You never heard that before?

A. I never heard a mortal soul breathe or suggest it.

Q. Did you ask Mr. Warner how Mr. Fleming got into the case?

A. No, sir; why should I? It was a matter long before I got into the case. I never had any conversation with Mr. Warner. The idea is too preposterous to entertain. I know enough of Mr. Warner to know that he would probably not have employed Mr. Fleming, I think, in any litigation, although I have no doubt he respects him as a man.

Q. You were aware, then, at the time the trial was going on of the fact that there was such a trial?

A. I was simply aware of the fact that a man named Dutton in New York was charged with defrauding somebody, but I did not connect it with this case or the lady who has brought this suit, and knew nothing about it. Afterwards when the papers were brought to me to look over, then I did.

Q. When was that and what papers?

1155 A. It was after I had this conversation with Mr. Blair, in which I told him I would represent Richardson in the case.

Q. You refer to the papers in this case after they were brought to you?

A. I mean the abstract of title and the checks.

Q. Before filing the answer you had become cognizant of the fact that Dutton was charged with defrauding the complainant here of the property?

A. Certainly; in fact, I was informed of that by the bill.

Q. And therefore you followed with more or less interest the proceedings in New York in regard to Dutton?

A. Those proceedings, I think, had long been closed before the bill was filed. I did not follow the proceedings on account of this case. I had not any idea about this case. I did not know anything about this case—whether Mr. Warner had any interest in the property, had bought it, or had any relation to it—until some time after the original bill was filed, according to my recollection.

Q. So that Dutton was convicted before the original bill was filed?

A. I am not sure whether he was or not. I do not know when Dutton was convicted. It was a matter that did not interest me. You may be right about that, though. He may have been convicted before the bill was filed.

Q. I am not saying he was or was not.

A. I don't know. I don't know anything about it.

Q. I want to see what your memory is worth.

A. My memory may be very bad on that point, and I am inclined to think it is. It did not interest me particularly.

Q. Then you have a peculiar kind of memory; it is good on some things and bad on others?

A. When I have a matter to recollect in regard to a case I recollect it. I do not recollect what I *read in the newspapers* sufficiently accurate to state. You may.

Q. How many hours have you spent trying to recollect these alleged conversations you have mentioned now?

A. I have not tried to recollect any alleged conversation. I am satisfied that anybody who knows me knows I would not state any alleged conversations. I rely upon the judge, when he hears this case, to believe me according to my reputation and record before him in that regard. I have not spent five minutes.

Q. I simply wanted to find out and not reflect upon you in any way—I have no such intention—how much preparation you have made, in view of your apparently defective memory, to recollect with such apparent clearness all the facts you have testified to in your direct examination, in view of the forgetfulness that you- memory exhibits on other subjects to such a remarkable extent.

A. I must take issue with you on the question that my memory is defective, or that it is defective to a remarkable extent. I do not think that represents the fact.

Q. You say you cannot remember whether the trial of Dutton and his conviction took place before or after the original bill was filed in this suit. You say you cannot recollect at all when
1156 your first interview was with Judge Wilson. You say you cannot recollect within a year when the answer was filed in this case, and you do not think that those are very startling matters of forgetfulness, do you?

A. I do not; no. My recollection, since you recall one point, is, I think, the pleadings in the case will show that Dutton was convicted subsequently to the filing of the original bill, but that is not a material matter the way I understand this case, and you must recollect I have paid no attention to this case for months and am not here as counsel, but am here simply to state what conversations I had with Judge Wilson.

Q. I should judge from your testimony that you were here as counsel.

A. And what conversations I had with Mr. Wine growing out of the filing of this answer. You are utterly mistaken in that regard. I am not here as counsel.

Q. Your testimony seems to be not as a witness, but as counsel, and therefore you must pardon my making such an error.

A. You must see that you are in error, and I think you must know also from the way I have testified that I am simply telling the facts.

Q. If you confine yourself, like other witnesses, to answering my

questions and not making long addresses whenever simply questions are put to you——

A. (Interposing.) Do not make long addresses to me and I will not make long addresses in reply. Just ask me the questions straightforwardly, and I will answer in the same way.

Q. I would like to learn from you, if possible, whether you have any way of refreshing your memory whether Dutton was convicted before or after you filed the answer of Mr. Richardson.

A. I will refer you to the record in this case which discloses that fact.

Q. Does the record in this case disclose when Dutton was convicted?

A. I think the bill that Mr. Maddox drew and the only one that had any merit in it discloses that fact; the only one that stated any case at all and stated an utterly different one from the original case.

Q. Do you testify now as counsel or as witness?

A. I will leave you and the court to judge of that.

Q. Now, do you not know that Dutton was convicted in December, 1896?

A. I do not. I have not the remotest idea personally when Dutton was convicted. All that I ever knew about the subject was what the pleadings in this case may or may not show.

Q. Don't you know that Dutton was convicted and had been already some time in State's prison for defrauding this complainant, and that your answer had already been filed several months before your conversation with Judge Wilson?

A. I say this, and the only part I can say absolutely, that the answer had been filed before I had a conversation with Judge Wilson, I think. I have an impression, however, that I had a previous conversation with Judge Wilson, but I am not sure. I am certain, however, that I had conversations with him after the answer was filed, but, as I have stated, it must have been a month or two after that. That is the fact I know. I do not know about Dut-
1157 ton's conviction. I was not present when Dutton was convicted. I had no part in the trial, and never knew anything about it personally.

Q. I am asking you whether your conversation with Judge Wilson did not take place after you heard of the conviction of Dutton—several months after.

A. I am unable to say if Dutton had been convicted prior to that time. I think I may safely say it is likely I heard of it. I think I did know. There was some testimony given—I heard there was some testimony given by a young man named Dodge, employed by Mr. Warner, and my present recollection is—although I am subject to correction on that point—that that was before this suit was filed.

Q. And you do not think you have a bad memory?

A. No; I do not. I may have; I may be mistaken; I may have a very poor memory, but I would not undertake next week this time to swear that I was here today, but I would be able to say that I was examined by you and give the substance of what was asked.

Q. So that the best you can do in regard to enlightening us as to

the time of your first conversation with Judge Wilson is that it was several months after the filing of the answer?

A. Yes; and before the filing of the first amendment to the bill.

Q. And, as well as you can fix it, some time the following spring after the answer was filed?

A. Yes, sir; I believe so.

Q. Now, can you tell us where the conversation was?

A. I am not sure whether the first conversation between Judge Wilson and myself was in the lunch-room at the city hall or whether it was the first conversation that Mr. Wine and I had when we took the papers I have referred to up to him.

Q. So that the defect of your memory not only relates to dates, but also includes places, does it?

A. It relates to this particular: that I am telling you the facts, but I cannot tell you the time.

Q. And you cannot tell us the place, neither, can you?

A. I cannot be certain about the place, but I do not think that is unusual.

Q. Your memory is a blank about the place?

A. No, sir; it is not. I am certain of a conversation with Mr. Wine and Judge Wilson at his office, of two conversations there with Judge Wilson, and of two or three conversations with Judge Wilson at the lunch table at the city hall.

Q. I am talking to you about the first conversation with Judge Wilson. I want you to tell me where it was.

A. I am unable to say exactly.

Q. You are unable to say at all, are you not?

A. No, sir; I am not unable to say at all.

Q. Where was it, then?

A. I cannot answer whether it occurred at the lunch-room or at his office. My impression is that it occurred at his office; that the first conversation was between Mr. Wine and myself and Judge Wilson.

Q. Did you ever have a conversation with Judge Wilson in which both Mr. Wine and Mr. Warner were present?

A. I did.

Q. What conversation was that numerically?

A. That I cannot say. I think it was about the third con-
1158 versation with Judge Wilson.

Q. You think that was about the third conversation, do you; where was that?

A. At his office.

Q. When was it?

A. Shortly after the first conversation. We had a number of conversations with him within two weeks.

Q. Was it some time in the spring of 1897 or was it in the summer of 1897?

A. My recollection is that it was warm weather. Whether it was in the spring or summer I do not know.

Q. Late spring or summer, you think?

A. It was warm.

Q. Can you place it in the spring or summer or anywhere?
A. No, sir; I cannot place the time.
Q. You cannot do that?
A. I cannot tell the month or week or the day.
Q. You cannot tell the season, can you?
A. It was either the late spring or the early summer, I think.
Q. Any one else present besides Mr. Wine, Mr. Warner, and Judge Wilson?
A. Mr. Blair was outside at one time in the little anteroom. He did not come into the room where we were.
Q. Has you any reason for excluding Mr. Blair?
A. I think Mr. Blair arrived late. He is a modest gentleman, and did not come in. It was his own fault, for we had no reason to exclude him.
Q. Don't you know that Mr. Blair was present all the time?
A. I do not.
Q. Will you swear he was not present?
A. Yes; he was not present all the time. It might be——
Q. (Interposing.) Will you swear he was not present part of the time?
A. Yes.
Q. Will you swear he was not present at all?
A. No.
Q. If he was present at all, he was present part of the time, was he not?
A. Yes; but he may have been present part of the time and absent part of the time; that is what your former question implied.
Q. My former question was, Was he present part of the time? and you said no.
A. Yes; but he was absent part of the time; that is what it meant.
Q. So that he was present part of the time?
A. He may have been, but I am not sure.
Q. You do not know?
A. Not positive enough to state under oath. My recollection is he was not in the room while the conversation was going on. He might have come in the room after we had had our talk and have been there at the sort of closing of it, after the discussion had ended.
Q. Now, is your recollection perfectly clear so that you are able to state with absolute positiveness that Mr. Blair was not present during the conversation that was had at Judge Wilson's office when Mr. Warner and Mr. Wine and yourself were there?
A. I am able to state positively that he was not there the whole of the time, and that is as far as I am able positively to go.
Q. Is that the only interview had with Judge Wilson at which Mr. Warner was present?
A. I cannot say. I think Mr. Warner and I had another interview with Judge Wilson.
1159 Q. You and Mr. Warner without Mr. Wine?
A. I think so; yes.
Q. What conversation was that numerically?

A. That must have been number four up in Judge Wilson's office, I think; number three or four.

Q. How long after number three?

A. I cannot tell.

Q. Was it a week?

A. I cannot tell.

Q. Was it a month?

A. I cannot tell you that.

Q. Was it two months?

A. I cannot tell you that.

Q. Was it six months?

A. I do not know that.

Q. Was it a year?

A. It was within the time of the filing of the amended bill, but what time that was I am unable to say. This case dragged on.

Q. When was the amended and supplemental bill filed?

A. The first one I do not know. The second one I do not know. I did know, but I have let it go out of my mind.

Q. Are those the only two conversations had with Judge Wilson at which Mr. Warner was present when you were there?

A. There was some conversation there during the taking of testimony.

Q. I mean in Judge Wilson's office prior to the trial of this case.

A. My recollection is there were two conversations with Mr. Wine and myself and Judge Wilson and two conversations with Mr. Warner and myself and Judge Wilson. I am pretty sure about the last one, because I advised Mr. Warner in the presence of Judge Wilson to take his money and have the suit dismissed on the payment of the amount of money involved.

Q. So that to the best of your recollection there were two conversations and only two conversations with Judge Wilson at which Mr. Warner was present?

A. That is my best recollection. I would not be absolutely certain about that; he might have been there more frequently.

Q. At one of these two conversations Mr. Wine was present and at the other Mr. Wine was absent?

A. Yes, sir; the conversation when Mr. Warner was present; but there were two other conversations between Mr. Wine and myself and Judge Wilson, and there was another conversation at my office between Judge Wilson, myself, and Mr. Blair simply to the effect that Judge Wilson had to leave to take a train, and Mr. Warner had to take a train and they would leave it to some future time. Intermediate between that there was some conversation up at Judge Wilson's and the lunch-room—brief talks.

Q. Do you not recollect Mr. Warner stating in your presence and in the presence of Judge Wilson that at the time of this transaction in April, 1896, he had said to Mr. Wine that they were put on notice or inquiry by force of the fact that the consideration was so inadequate, and Dutton, a judgment debtor, in such great haste to dispose of the property?

A. I am very certain Mr. Warner never made any such statement

as that. There might have been some argument up there between Judge Wilson and Mr. Warner about the legal points, but there was no statement of fact of any kind. I do not recollect that there
1160 was any such argument, but I am absolutely certain there was no foundation of fact for that question.

Q. Do you not recollect Mr. Warner's making that statement to Judge Wilson?

A. No; if I did recollect that I would certainly say so.

Q. You do not recollect any statement of that kind being made by Mr. Warner to Judge Wilson at that time?

A. I must say I do not. If Judge Wilson should state that such were the fact I have no doubt I would think it was said.

Q. You would not impugn Judge Wilson, then?

A. Not at all.

Q. It is very kind of you. Don't you recollect Mr. Warner saying the words in Judge Wilson's presence that he had told Mr. Wine at the time of the transaction that they were put on notice or inquiry?

A. I do not. I have already answered that question.

Q. The question is slightly different from the preceding one.

A. I have no desire to conceal anything about this matter, and if Mr. Warner had made any such statement as that to anybody or any person I am not aware of it.

Q. Who was the first person who saw you in regard to this case?

A. Mr. Wine.

Q. Was that in your office?

A. Yes, sir.

Q. How long was that after the suit was commenced?

A. It was shortly after the suit was commenced. I do not know exactly the time. I think Mr. Wine said he had seen a notice of the suit in a newspaper. I did not see it myself, and I do not know whether there was ever any notice of it in the newspaper.

Q. And at that interview did he proceed to state to you the facts which you subsequently embodied in the answer of Richardson?

A. He proceeded to state to me as I have stated on my direct examination, and I subsequently embodied those facts as I understood them myself in that answer of Richardson.

Q. Why do you draw a distinction between what Mr. Wine said to you and what you understood yourself? Did you not derive your information from Mr. Wine?

A. I made that distinction because Mr. Wine stated the whole case to me and relied upon me to put it in such shape as I saw fit, and I myself put it in the shape that it is in the answer of Richardson. I will explain to you more fully if you desire.

Q. I am satisfied with your answer, unless you desire to make another address. If you wish to do that no power I have or that the examiner has can stop you.

A. I have no wish to answer any more fully if you do not desire it, but I can more fully answer if desired.

Q. If you are unable to separate your personality as a witness from your personality as counsel it is not my fault.

A. That may be my difficulty. I hope I have succeeded. They say lawyers make bad witnesses. I have no intention of putting my personality as a lawyer into my personality as a witness in this case.

Q. How long was your first interview with Mr. Wine on
1161 the occasion to which you refer?

A. That would be utterly impossible for me to recollect. It was not a very long interview. I could not tell after this lapse of time. I do not think any lawyer could tell a fact like that.

Q. How many interviews did you have with Mr. Wine before filing the answer in this case?

A. My recollection is I had two—one when he gave me the facts and one when he brought Mr. Richardson in after the answer was prepared.

Q. So your memory only enables you to recall two interviews with Mr. Wine after you filed that answer?

A. I may have had short talks with him on the steps, but consultations, I had only two with him. I may have had a talk with him if I went into the office; I do not know.

By Mr. MATTINGLY:

Q. It does not appear on the record where your office is or was situated at that time.

A. My office has been for fourteen or fifteen years at 916 F street.

Q. The same office as Mr. B. H. Warner?

A. Yes, sir; the last five or six years I have been immediately over the office of Mr. Warner. I have had offices in all parts of the building.

By Mr. KEANE:

Q. How many years have you been acting for the firm of B. H. Warner & Co.?

A. I have never been the regular attorney of B. H. Warner & Co. I had a sort of arrangement with Mr. Warner that I should attend to the landlord and tenant business of the concern, and from time to time they have sent up ordinary suits.

Q. You mean that you attend to their dispossessary proceedings?

A. They do not have any. I think I have had one case probably in four years, but if Mr. Swartzell wants to know whether a lease ought to be drawn so and so or whether a thirty days' notice is a proper notice to give a tenant or how to proceed, he comes up and asks me. If he wants an attachment for rent of a client of theirs, he generally sends it up and I do it. If an attack is made on a deed of trust or against Warner & Wine or any of the firm or they are made parties as trustees, the papers are simply sent up to me and I merely draw the answer and send it downstairs, as a rule, and that ends it.

Q. How long ago *it is* since your first relation arose with B. H. Warner & Co.?

A. Since I have been in the front office, I think—the front office of their building—and you can tell that by going to the books. I

think it has been about four years, but I have never been Mr. Warner's private attorney. I have never represented him except in one case and except a case pending now, two cases altogether that I recall.

Q. They just employ you in such little matters as you have indicated?

A. Yes, sir; that has been the practice.

Q. And if an important matter arises they do not employ you?

A. They do not have any important matters. I never
1162 knew the firm to have any important litigation. Their business is an absolute clean business as it comes before me. They do not need any litigation. I think they would go out of their way any time to get out of a snarl where a litigation would be involved.

Q. Are you testifying now as counsel or as a witness?

A. As a witness. I know that as a matter of fact it does not pay a business man to get into a business of this kind. It is not a question of money; it is the annoyance that a man does not want.

Q. So, as a lawyer, you think that kind of testimony is competent in the witness chair, do you?

A. I am stating to you simply what I know.

Q. You think, do you, that the kind of testimony you have been giving from the beginning of this examination is competent from a witness, do you?

A. My dear sir——

Q. (Interposing.) Do you think, as a lawyer——

A. (Interposing.) I am not here to argue a question of law with you.

Q. I am asking you whether you are now, in good faith, testifying according to your conscience as to facts and matters that, as a lawyer, you think a witness is competent to testify to on the stand and are admissible. I want to know whether you do or not.

A. I am testifying as to matters and facts in perfect good faith and with an absolutely clear conscience. Whether I am being examined about the legal aspects of the case or not I do not know.

Q. And if the testimony you have given is utterly incompetent, inadmissible, and improper, we must lay the charge of your violating what you know to be good faith and good conscience to the simple fact that you are ignorant; is that right?

A. Yes, sir; that is absolutely right. I may be — poor lawyer and I may be a poor witness, too. I am telling you the truth. I do not know who it hurts. It may hurt you; it seems to.

Q. Of course you are not trying to hurt me, are you?

A. No, sir; and if you will ask me any question of fact I will tell you that fact, whether it militates against Mr. Warner or for him.

Q. Why do you protest so much that you are only trying to do what is right?

A. I am not protesting. You are protesting and I am not. I am simply telling you the facts. You do not seem to want to know what the facts are, evidently, as far as I can see. Ask me the facts and do not argue with me.

Q. Are you through?

A. I do not know. If you ask me some more questions I will answer them. Now, we can get along very pleasantly if you do not argue with me; that is all.

Q. Have you finished now?

(The witness made no response.)

Q. How many interviews did you have with Mr. Richardson prior to filing this answer or bill?

A. I had no interview with Mr. Richardson except the last one, I think, when he came into the office with Mr. Wine, and I then assured them both that the answer was all right.

Q. You are quite sure you had no interview with Mr. Richardson about this answer or in regard to this case prior to filing that
1163 bill until after you had drawn the answer?

A. Yes, sir; then it was opened to discussion. We discussed it then.

Q. At the time of your first interview with Mr. Wine, had you a copy of the orignal bill in equity?

A. I do not know; I do not think I had; I do not believe I did.

Q. You cannot recollect positively, can you?

A. I am pretty sure when I first saw Mr. Wine about this that I did not have any copy of the original bill. I saw him when I had a copy of it.

Q. Have you any memory upon that point so as to state whether you do or do not recollect?

A. The first conversation I had with Mr. Wine was had before I had a copy of the bill; I am pretty sure of that.

Q. You cannot state that positively?

A. I have stated it as positively as I can.

Q. I am trying to find out what your memory is worth. That is a prominent fact and yet you are unable to recollect it.

A. I do not regard it as a prominent fact; I think it is a minor detail.

Q. You cannot remember whether, at your first interview with Mr. Wine, when he consulted you in regard to this suit, you had or had not the original bill in equity?

A. I have already answered that; I told you I was pretty sure I had not.

Q. That is the best you can do, is it?

A. That is the best any man can do.

Q. Now, can you recollect when you first saw the original bill in equity?

A. No, indeed; nor can I recollect when I first saw the bill in equity in any other case I ever tried or had anything to do with.

Q. You cannot recollect whether or not, at your first interview with Mr. Wine, you read over the bill in equity and commented on it?

A. It may be possible, but I will not say whether I did or not. If Mr. Wine said I did, his recollection is more apt to be accurate on that point than mine.

Q. It is curious, is it not, that you cannot remember whether or

not you read that bill over and commented on it to Mr. Wine at your first interview, and yet are seemingly able to remember other things that were said and done at that interview?

A. No; I recollect reading the bill over, but whether I read it over to Mr. Wine at the first interview or whether I saw him afterwards and read it over and commented on it, I cannot say. I very likely read it to Mr. Wine at some time, but when I cannot say.

Q. Did I ask you what you very likely did?

A. I do not know whether you did or not.

Q. Do you think what you very likely did is of any value here from a witness on the stand?

A. Yes, sir; I think so because I think that is a form of expression that means what the probabilities are. I am telling you according to my recollection.

Q. I do not want to know——

A. (Interposing.) You cannot stop me from answering.

Mr. KEANE: I can put on the record that I do not want you to state what you very likely did or what might have been. I
1164 want to know whether you have a recollection of certain things, and, if you have and recall them, what the facts are that you recollect are competent, and you must know that as a lawyer. If you further state "probabilities" or "might-have-beens" you do it subject to my objection and in violation of what you must know, as a competent lawyer, is clearly improper.

Mr. MATTINGLY: Go on and complete your answer.

Mr. KEANE: I, of course, make objection to such answers.

The WITNESS: Your criticism is a mere verbal criticism of the form of my answer. I am convinced I cannot state when I read over the paragraphs of that original bill, but at some time I read over to Mr. Wine where it states that the purchase was without consideration, and told Mr. Wine that this answer was a mere plea; that it was a mere affirmative allegation of a matter embraced in the answer, a form that was necessary to put that in in order to make a valid plea of a consideration for value and an innocent purchaser under the known equity rules. I say I recollect that I told Mr. Wine that, and I am satisfied at that time I must have read him the bill to show him what the issue was.

Q. Now, at that time——

A. (Interposing.) I want to say that I have not seen Mr. Wine's testimony, and do not know what he testified to.

Q. Now, at that time you knew, did you not, the fact which Mr. Warner and Mr. Wine have since admitted in their answer to the amended and supplemental bill, namely, that they were the purchasers of this property, and had simply made use of Mr. Wine's nephew for convenience?

A. Undoubtedly. That is precisely what I mean.

Q. You say you did know that?

A. Certainly; that was my information. I was not a party to the testimony. That is what I was told.

Q. You believed that?

A. Why, certainly.

Q. Had Mr. Wine said anything to you at that time about his having made an affidavit in a wholly collateral matter on the 12th of May, 1896, in a suit in New York known as Hirsch against Dutton, pending there in the supreme court, and did he state to you what he had sworn to in that affidavit?

A. No.

Q. He did not?

A. No, sir.

Q. And you did not know it at that time?

A. I did not. In fact, I do not know it now. I do not mean to say it is not so, but you understand I mean I personally do not know it.

Q. You saw, did you not, by the bill in equity, that the complainant was evidently ignorant that either Mr. Warner or Mr. Wine, or any one else except Louis W. Richardson, had any interest in that property?

A. I was fully convinced that the complainant in the case, judging from the statements in the bill, did not know anything about the transaction between Dutton and Warner.

Q. Had Mr. Wine informed you at the time of his conversations with you prior to your filing that bill of the fact that he knew that Stephen A. Dutton was a judgment debtor with several
1165 judgments against him in New York, and that he was in great haste to dispose of that property, and that is why he got it so cheap; did he tell you that?

A. I think I asked him something about the price and value of the property.

Q. Have you heard what I said?

A. Yes; I heard you.

Q. Did he tell you that or not?

A. I presume to answer in my own way. Mr. Wine did not tell me anything of that kind the way you put it. My recollection is that Mr. Wine—I asked Mr. Wine how he came to buy it, and he told me that Dutton represented that he was in need of money; that he had a judgment against him.

Q. Do you want to get in a statement now as counsel or witness?

A. I do not want to get in a statement as counsel at all.

Q. Why not do like other witnesses and just answer the question?

A. I am convinced that you are aware of it, too, that I cannot answer questions yes or no——

Q. (Interposing.) Can you not do like other witnesses?

A. Other witnesses do not answer questions yes or no. Any lawyer should want a witness to answer a question fairly. If you do not want me to answer that way, I will suspend until you put it another way.

Q. Will you answer my questions categorically? I would like you to conduct yourself like other witnesses and not make an argument as to your client every question that is asked you.

A. I have no client to make an argument for. I have forgotten what your question was.

(Question repeated.)

Mr. KEANE: Can you not answer whether he told you that? That is susceptable of a categorical reply.

A. As you have put the question, Mr. Wine never told me any such thing. You must recollect your question is involved and speaks of several matters. Mr. Wine mentioned some things that you speak of.

Q. Which of the things did he mention?

A. He did not mention that Dutton was in any great haste. He did not mention that he bought—— (Strike that out, Mr. Examiner.)

Mr. KEANE (to the examiner): Put down just what he says. Don't strike anything out.

The WITNESS: I mean to say he did not tell me anything about having bought the property cheap.

Q. He did not tell you that he had bought it at a great bargain, did he?

A. No; I do not think he did.

Q. You do not know that subsequently he testified on the stand that he considered he was getting a bargain, do you?

A. I do not. I have not seen his testimony. I think he was mistaken in his facts.

Q. Are you testifying now as his counsel or as a witness?

A. I am testifying as a witness.

Q. Were you asked any such question?

A. No; you did not ask me any such question.

1166 Q. You are a very willing witness?

A. No, sir; I am not. I am telling you the facts.

Q. How would you characterize a witness whom you saw acting on the stand as you are doing?

Mr. MATTINGLY: That question is objected to as uncalled for, immaterial, and improper.

The WITNESS: I have no quarrel with you. I will leave it to the court.

Mr. KEANE: None whatever. I simply want your own opinion as a question of propriety. I want to know what you think of yourself.

The WITNESS: If you will ask me a fair question, I will answer it fairly. Do not ask me two or three questions in one question and then expect me to answer them yes or no.

Mr. KEANE: I am perfectly satisfied with the way you are testifying. I have no fault to find; you cannot please me better.

The WITNESS: It makes no difference whether I please you or not; it makes no difference to me.

Q. At the time of any of these conversations had with your client, Mr. Wine, prior to your drawing this answer of Richardson's, did he happen to tell you of a certain conversation he had had with John B. Wight prior to the time of his taking the deed of this property from Stephen A. Dutton to his nephew, Louis W. Richardson, for convenience?

A. No; I had not heard of Mr. Wight until he was produced as a witness in this case.

Q. Mr. Wine did not relate that little conversation to you, did he?

A. As I say, he did *not say anything about* Mr. Wight to me, and I had not heard of his connection with the matter until Mr. Wight was produced one day when I was present—the day that Mr. Wight was produced as a witness.

Q. Did you act for Mr. Wine or for Mr. Warner as attorney or in any other capacity at the time this property was taken in the name of Richardson?

A. No, sir; I did not know anything about it at the time the title was taken by Richardson.

Q. You did not draw the deed, did you?

A. No; I did not. They would not want me to draw the deed. They have a corps of clerks and can save the fees by getting the clerks — draw them.

Q. That is very interesting.

A. It is a fact.

Q. But it was not asked.

A. Yes; you asked me whether I drew the deed, and I told you I did not and the reason why I would not have drawn it.

Q. I think I would be content with your answer without telling any reasons that are not called for, as it only encumbers this record, which is exceedingly large. Still, if you wish to go on after you have answered my question and make further sta-ments, I cannot stop you from doing it. Your first knowledge that this property was taken in the name of Mr. Richardson for convenience,
1167 instead of directly to Warner or Wine, was when Mr. Wine first consulted you in regard to drawing the answer of Richardson in this suit. Is that correct?

A. I think it is; that is my recollection.

Q. When was your first interview with Mr. Warner on the subject of this suit?

A. I cannot tell that. I had very little conversation with Mr. Warner about it. The only conversations I had with Mr. Warner in regard to this suit were had in reference to calls on Judge Wilson as to the necessity on his part of treating it with some consideration.

Q. So that you had no conversation, did you, with Mr. Warner upon the subject of this suit prior to the filing of Richardson's answer. Is that right?

A. That is absolutely correct. He may incidentally have asked me how it was getting along. I do not think he even asked me that, but I had no conversation with him on the subject.

Q. And he was not present at any conversation you had with Mr. Richardson or with Mr. Wine on the subject of this suit at any time prior to the filing of the answer? Is that right?

A. He certainly was not in my office. There may have been some incidental talk, about a word or two, while I was downstairs, but that is all. I do not think there was even that.

Q. So that the testimony of Richardson, you think, is false where he states as follows:

"Q. Was Mr. B. H. Warner ever present at any interview you ever had on the subject of this suit with Mr. E. H. Thomas?

"A. Yes."

And the further question and answer:

"Q. Was not either Mr. Warner or Mr. Wine or both gentlemen present at interviews you generally had with Mr. E. H. Thomas?

"A. Yes."

The WITNESS: I think Mr. Richardson is mistaken about that. I may have had a talk with Mr. Warner in Mr. Wine's office when Mr. Richardson was present, but what I would call consultations in my office, there were no interviews of that kind with Mr. Warner, Mr. Wine, Mr. Richardson, or myself.

Q. That is what you would call consultations?

A. Yes. You understand I had frequent occasion to go down in Mr. Warner's office, and it might be some question was asked me while Mr. Richardson was present. If Mr. Warner was ever present, it might have been at one of those. I do not know that he was even then.

Q. You think you would put your memory against the memory of Mr. Richardson?

A. Undoubtedly I would.

Q. You think you would?

A. Yes, sir.

Q. You think your memory is reliable?

A. I think my memory is reliable on matters of fact, but not on dates or times.

Q. And you would not call it a matter of fact as to whether you read a pleading at a given interview or not?

A. I do not know whether I would or not.

Q. That would be a date, I suppose?

A. If it was important I might regard it. I regard it in this case as a minor detail. I think I told you I read that over to Mr. Wine.

1168 Q. In other words, you deny the truth of what Mr. Richardson swore to?

A. No; I do not deny the truth of what Mr. Richardson swore to. I do not say that Mr. Richardson has stated falsely. My belief is that Mr. Richardson is a conscientious young man; I think he is mistaken as to that.

Q. Did Mr. Wine tell you he did not wish himself or Mr. Warner to be made parties defendant for convenience?

A. No; he did not tell me that. He objected to being made a party to the suit unless it was necessary, on the ground which I have stated, but left the matter entirely with me.

Q. At all events, you all preferred to allow the complainant to repose in ignorance of the fact that Mr. Warner and Mr. Wine had any connection whatever with that property, and to continue to suppose that Louis W. Richardson was the owner of the property?

A. No; there was no preference of that kind. You will see that

inevitably it must have appeared, as it did on the face of that answer, that Warner and Wine were interested in that purchase.

Q. You think that, do you?

A. Certainly. They paid the purchase-money, and they acted in the transaction.

Q. You think it appears on the face of that transaction that Warner and Wine were interested in that property, do you?

A. In a measure, yes, and I do not think it is material whether they were or not. The simple question to be met by your bill was, was a consideration paid; not whether it was an adequate consideration.

Q. Did you not just state that you considered it appeared on the face of that answer that Warner and Wine were interested as purchaser- of that property?

A. No; I did not.

Q. What did you mean appears on the face of the answer, that they were interested as brokers, and that Mr. Richardson was the owner?

A. No; not exactly that. It appears on the face of the answer, as I recall it, that Warner and Wine and the other members of that concern had paid the purchase price and taken the title in Richardson's name.

Q. You think that appears in the answer, do you?

A. Yes, sir.

Q. Please refer to the answer, and read where that appears.

A. I have not it here and have not seen it recently. If you have it I will refer to it.

Q. (Handing witness a paper.) Now, will you kindly do us the favor to point out any such statement in that answer?

A. The statement is in that answer that Warner & Co. deposited $7,086.33 with the Columbia Title Company; that is one of the matters.

Q. That is what you refer to, is it not: "Upon the report of the said Columbia Title Insurance Company that the title to said property was good in said defendant, Stephen A. Dutton, the said firm of B. H. Warner & Co., 'for and on behalf of the defendant,' in good faith, in the usual course of business, relying upon Exhibit L. W. R. No. 2, the said certificate of title, deposited $7,086.33, being the cash payment, less taxes and interest, of the purchase-money with said title company"?

A. That is what I refer to.

1169 Q. And so you think, do you, that the statement just quoted discloses on the face of the answer that Warner and Wine had an interest in that property; is that right?

A. I have not stated that.

Q. You have not stated that?

A. I have stated that the answer shows on its face that they were interested in the property. I mean to say that any person reading that answer would know that at the trial of that case it was bound to be ascertained just precisely what the interest of Warner & Co.

and every member of the firm in it was and how that money came to be deposited. The object of the answer was simply to put in, by way of plea, that Richardson was a *bona fide* purchaser for a valuable consideration, and I did not believe and do not believe now that you are entitled to know on the original bill *is* stated what his private relations were between himself and Warner and Wine.

Q. Then we are to understand, are we, that your reason for concealing a fact of which you knew the complainant was ignorant was that you was certain that fact was bound to be divulged.

A. I did not conceal any fact. There was no intention of concealing anything. The whole object of it was simply to present it as a plea of a purchaser for a valuable consideration.

("It is admitted that on the 10th of January, 1896, Mr. Warner was at the Emergency hospital, in Washington, present at a meeting of the board of directors, in this city, and also on April 10th, 1896, and that Mr. Wight was present, at 2 o'clock in the afternoon.")

By Mr. KEANE:

Q. You have testified, in explanation of the fact, that the answer of Richardson conceals the interest or ownership of Messrs. Warner and Wine of this property by stating as an explanation of such concealment that you considered that the trial of that suit was bound to divulge the fact of the ownership of Warner and Wine, have you not?

Mr. MATTINGLY: Objected to as being argumentative, not based on the previous testimony of the witness, irrelevant, and improper.

A. I have not testified as to any explanation of any concealment.

Q. Have you not testified——

A. (Interposing.) I have not finished yet. I have testified to the facts. I have said that I never supposed that there was any concealment in the matter at all. It was perfectly apparent to me, as it must be apparent to you and to any other intelligent person, that as soon as the testimony was developed in that case every fact in regard to the purchase must inevitably come out. Therefore it would have been foolish to put the answer in on the ground of concealment. It was put in *bona fide*, as I have said before, simply because it was a plea.

Q. So that your explanation for your acts in pursuance of the wishes of your clients of not revealing to the complainant the fact —
1170 which you knew she was ignorant, namely, that Warner and Wine were the true owners of that property and Richardson only a dummy, was that in the end she would be obliged to learn it. Is that the substance of what you say?

A. Why, no; that is not what I say. You are assuming that there was something concealed.

Q. Did you not say——

A. (Interposing.) I say there was nothing concealed. I say it was folly to suppose there was any reason to conceal anything. It

was simply done because Mr. Richardson was the owner of the record title and trustee like thousands of other trustees have been since the earliest times of the law down to the present time, and the simple question was whether that title that Richardson had was based upon a valuable consideration; not the amount of it, but nothing else than a valuable consideration. That is the whole of the bill. That was the issue I met by that answer.

Q. You have testified, have you not, that you considered that in the end the complainant would have it come to her knowledge that Messrs. Warner and Wine were the owners of that property and Richardson only a dummy? Is that so or not?

A. Your remark about a dummy is particularly uncalled for.

Q. What word would you prefer?

A. Why, Richardson was a trustee. He was in the position of a man who had the title to property put in him by another man who had paid the purchase price for it, which is a common and ordinary thing, as any lawyer ought to know.

Q. You think Richardson was trustee?

A. Certainly, he was trustee. That is what I understood him to be.

Q. That is what you understood him to be?

A. Certainly; he held the title for Warner and Wine in trust.

Q. You like the word "trustee" better than "dummy"?

A. No; I do not care about the word, but I think when you use the word "dummy" you have an ulterior purpose in doing it, and do not want the facts in the case.

Q. When you use the word "trustee" you think it is the word that most aptly fits.

A. I think it is a word that any intelligent and honest man would use as applicable to Richardson's situation.

Q. How long had Richardson been trustee?

A. Since the time he got the title.

Q. When was that—how many months previous?

A. Some months before; I think some time in April; I cannot say about the time; the record will show that.

Q. So you did not know, did you, at the time you drew this answer that Richardson had ceased either to be a dummy or a trustee?

A. I did not.

Q. You did not know that?

A. I did not.

Q. And you did not know that young Richardson had been made use of by his uncle and his uncle's partner in this case without their having previously revealed to him the circumstances under which they were acquiring this property in his name for convenience?

A. I do not know any such thing, whether it was ever so or not; I have no knowledge on the subject.

1171 Q. You heard Richardson's testimony in this case, did you not?

A. I did not, nor have I read his testimony, nor have I talked with him about it, nor have I talked with Mr. Wine about his testimony.

Q. You have forgotten when Mr. Richardson gave his testimony?

A. I am absolutely positive I was not present. I know this, that a telephone message was sent to my office, so I was informed, and asked me to be present and that a gentleman from my office went up there.

Mr. DARLINGTON: The record shows that Mr. Thomas was not present at Mr. Richardson's examination.

Mr. KEANE: The record shows that Mr. Thomas was not present?

Mr. DARLINGTON: Yes, sir.

Mr. KEANE: Then I must differ from Mr. Darlington about that. Mr. Thomas was present to my recollection.

Mr. DARLINGTON: Well, the record shows he was not and we will rely upon that.

Mr. THOMAS: No, sir; I am sure I was not present when Mr. Richardson testified.

Q. Did Mr. Wine tell you that he and Mr. Warner had paid some $7,000 to Stephen A. Dutton at the time that that title was taken for their convenience to Richardson?

A. Mr. Wine informed me that B. H. Warner & Co. had sent their check over to the Columbia Title Company for the equity; that Mr. Warner and himself were the purchasers, and that the Columbia Title Company had disbursed the money on their checks; in fact, there was no necessity of his telling me that, because the papers handed me disclosed that fact.

Q. He told you that he and Mr. Warner were purchasers?

A. He told me they had bought the property, but how they got the money or anything of that kind he did not tell me and I did not inquire about it; it is a common occurrence to take title in other men here.

Q. Circumstances alter cases.

A. I admit that, but you must remember that the circumstances presented to me in this case did not make any difference.

Q. We will sum this case up at the proper time. So that you knew that Richardson had not paid one dollar for that property?

A. Certainly I did.

Q. Now, after you had prepared this answer what did you do with it?

A. I either sent it down to Mr. Wine or else he came up there and examined it in my office.

Q. Which was it—did you send it down to Mr. Wine or did he come up and examine it in your office?

A. It must have been one or the other, certainly. It may have been examined in my office, and it may have been examined downstairs; but I am sure it was examined in my office.

Q. You remember it was examined in your office?

A. Yes, sir.

Q. By Mr. Wine?

A. Yes, sir.

Q. And by Mr. Richardson?

1172 A. He was present. I do not think Mr. Richardson read it over there, but he was present. It was taken away from my office.

Q. Who else was present?

A. I do not think anybody else was present. There may have been my young lady typewriter there. There may have been other persons, but I do not recall any other persons present than the typewriter, Mr. Wine, and Mr. Richardson; in fact, I could not swear the typewriter was there. She ought to have been there; it was her business to be there.

Q. Was it sworn to at that time?

A. No, sir. It was taken downstairs to be sworn to.

Q. Who took it downstairs?

A. Mr. Wine.

Q. Did Mr. Richardson go with him?

A. I think he did.

Q. Have you any recaolle-tion?

A. That is my recollection, but I am not positive whether Mr. Richardson went downstairs with him or whether Mr. Richardson went out with him and swore to it afterwards.

Q. You are not positive that Mr. Wine went down with it?

A. Mr. Wine took the document downstairs; yes; but whether it was instantly sworn to or sworn to a day or two afterwards I cannot say.

Q. What was your object in holding Warner and Wine out in that pleading as Richardson's brokers?

A. I had no particular object about that. There was no particular scheme about it. That was the course the transaction took, and the plea simply represents the narrative of that fact. As between third parties and Mr. Richardson, my idea was—I may be right or wrong—that they were his agents or brokers, and they so appeared on the face of the paper. That was all.

Q. So that at the time of drawing that answer you knew that Warner and Wine had obtained this property from a person whom they knew to be a judgment debtor, who had several judgments from a foreign State against him, and that he was disposing in great haste of this property to them for the consideration of $7,000, they assuming the mortgages on the premises of $17,500, and they knowing that the judgment debtor had only just acquired this property, the ink on the deeds being hardly dry, and that he had pretended to Mr. Wight, who so informed Mr. Wine, that he had given property in exchange for it worth $65,000, and that they themselves had this very property on their books for sale at the time for $55,000, and you drew this answer and concealed the connection of Messrs. Warner and Wine with the transaction in this way by the innocent motive that you explained, with all these facts in your mind?

Mr. MATTINGLY: Objected to as argumentative, immaterial, and irrelevant and improper.

A. I do not know the facts, nor do I now know that what you

say are the facts that then existed, or at any time existed, in the shape you put the question. I had knowledge of some of the things you mention, but a great many of the things you mention I
1173 never had any knowledge of and do not know now. In fact, your question is so long that I cannot carry it in my mind to answer it in detail.

Q. Mr. Wine had not told you of some of these things?

A. Mr. Wine had not told me, and I never knew and do not know now of a great many things you assert in that question.

Q. If you had known all of those things I suppose you would have still served the same answer?

A. No.

Q. You would not?

A. No. If I had known or if I had ever known there was any relation of trust or confidence between Mr. Warner and Mr. Wine and Miss Godfrey, and that Warner was an agent, as it is alleged here, for the purpose of selling this very property, I would have set the facts all out. The bill as presented to me was simply a case, as I have before explained, and, as I am sure Mr. Wine understood, simply a case where it was alleged that the purchase by Richardson from Dutton was without consideration. Now, your second bill set up a new case, and your last amendment and supplemental bill set up a totally different—an entirely different—case. If that had been the case, I would have answered it fully. I want to say I am satisfied that Mr. Wine did not know when he talked with me that the property was on the books of B. H. Warner & Co. for sale.

Q. Was your motive in not setting up the facts of your clients' connection with this transaction because you apprehended that if they acquired this knowledge they would do immediately what they subsequently did do with leave of the court, namely, file the present supplemental bill?

A. Not at all. You can very readily see that cannot be so, for this plea I filed negatived every form of notice or knowledge. As I told you, it was simply a plea under the rule, and, as I understood the equity practice, Richardson's title was based upon valuable consideration without notice.

Q. The pleading so carefully fails to reveal that Warner and Wine had any interest in the property, and it was merely an accident, that the pleading holds them out as the brokers in the trans-tion?

A. Not at all. I have not said it was an accident.

Q. That was only chance?

A. It was not chance. It was neither accident nor chance. It was done upon the theory and idea that Mr. Richardson's title was all that was involved, and you can see if you consult any book on pleading that the answer itself follows exactly what is required in a plea for a valuable consideration.

Q. And you thought if the plaintiff could be kept from acquiring any further knowledge that your clients might be in a little better shape than if the truth should become known to her?

A. Not at all. I never had any such idea. The answer on its

face discloses the contrary. She was bound to know and everybody else was bound to know at the hearing of the case who Richardson held the title for. There was no attempt to conceal that. This was a plea that Mr. Richardson held the title, and whether paid for by Mr. Warner or anybody else was utterly immaterial. It was based upon a valuable consideration without notice.

1174 Q. You mean bound to know at the trial provided the witnesses swore to the truth?

A. Bound to know in any event. I never assume that a witness is not going to swear to the truth in any case. I suppose a man who suspects that is one who has had some such case of his own.

Q. Would they be bound to know if the witnesses did not swear to the truth; in that case would the plaintiff ever have acquired the knowledge here or at the trial of this case if witnesses took the stand and did not swear to the truth; would she then have acquired knowledge?

A. It could not have possibly been concealed.

Q. You do not think so?

A. No. Here was B. H. Warner & Company's check for several thousands of dollars. Here was Mr. Richardson, whom everybody knows was a young man starting in business without means, and he would be either obliged to say that Warner & Company made him a present of the money or that they advanced the money and he held the title for them. It could not have been under any circumstances held up or the fraud being prevented from being known.

Q. You think that if it had not been stated at the trial of that case on the witness stand that Richardson was a *bona fide* purchaser of that property, and that his kind, good uncle, who took a deep interest in him and had loaned the boy a little money for the purpose of advancing his interests in the world, knowing it was on perfectly good security, namely, this property, not taking any risks, at the same time benevolently assisting a relative, that the complainant would have been able to contradict and disprove such a state of facts, do you?

Q. That is not your case now. Your case now is that Warner & Co. bought this in fraud, and——

Q. (Interposing.) You do not understand my question.

A. I do understand your question, but you do not want me to understand it.

Q. You do not want to answer it.

A. I am going to answer it.

Q. If you have any objection——

A. I have none. You stated in your bill that Richardson did not pay a valuable consideration for this property. It is immaterial whether it was a gift or not a gift, whether he held it as trustee or not as trustee; but when you come in now and say that Warner was a trustee for complainant in this case, and that he made Richardson his tool and concealed all these facts purposely and had an ulterior motive in it, you make a different case, which would have to be met with a different answer. If there had been anything of that kind or intimation of it in the bill, it appears to me it would have been

thought of by the complainant or her counsel at the time the original bill was filed.

Q. Did you not testify just now that you thought the complainant was certain in the end to learn the truth that Warner and Wine were the real purchasers and Richardson a dummy, despite the fact that it was so carefully concealed in the answer and they held out as "brokers," because it would all come out at the trial, and I asked you whether you did not mean it would all come out at the trial, provided the truth was told, and you said, did you not, that it would come out whether the truth was told or not; is not that the fact?

1175 & 1176

Mr. MATTINGLY: Objected to.

A. The record will show what I said.

EDWARD H. THOMAS.

Subscribed and sworn to before me this 15th day of July, 1898.

ROB'T L. MILLER,
Examiner in Chancery.

* * * * * * * *

1177 BRAINARD H. WARNER, one of the defendants herein, being first duly sworn, was examined and testified as follows:

By Mr. DARLINGTON:

Q. Please state your full name.

A. Brainard H. Warner.

Q. You reside where?

A. Washington, D. C.

Q. How long have you lived here and in what business have you been engaged?

A. Since 1863 with but little interruption, and have been engaged since 1869 in the real-estate business, but with interruptions incident to my connection with other enterprises.

Q. To what other enterprises do you refer?

A. I have been connected with two that absorbed a good deal of my time, the Columbia national bank and the Washington Loan and Trust Company, in connection with a great many other enterprises.

Q. What was your connection with the two you particularly referred to?

A. I organized them and was president of them until I resigned.

Q. Now, please tell us the whole of your connection with the purchase of the property which is involved in this suit, located at Q street and New Hampshire avenue.

A. Mrs. Mussey came to the office of B. H. Warner & Co., I think, on the morning of April 10th, 1896. I was busy and with some one in my back office and I turned her over to Mr. Wine. A few moments afterwards he told me she had offered the property involved in this controversy for sale, and asked me to look at the lots on the plat book, which I did. He told me she would take $25,000 for the

property, less a commission of three per cent. He spoke at that time about my buying that property. I think his idea was first that I might buy the property myself, but a few moments afterwards when I was disengaged he suggested that we buy the property together. I told him at that time I did not care to purchase without further consideration. I think we talked very little about it at that time. In the afternoon he——

Mr. KEANE, interposing: Note an objection here to conversation between Mr. Warner and Mr. Wine as incompetent, and I desire to state that owing to the character of these questions, which enables the witness to proceed and make a general statement, it is impossible to make an objection except after he has stated something to which an objection should be made.

Mr. DARLINGTON: I am quite willing that Mr. Keane, after Mr. Warner has concluded his answer, may object to such portions of it as he thinks are incompetent.

The WITNESS: In the afternoon Mr. Wine came in, and I think he playfully said, "It is too late now for you to take an interest in that property; it has been sold," but I discovered that he was joking. He then told me he had a contract signed for the purchase of the property on the terms named, and I agreed to go in and take a half interest in the property, and asked him to see about the title; to get the Columbia Title Company to attend to the closing of the sale. On Monday the sale was consummated. That is about the body of the transaction.

1178 & 1179

Q. You refer to the firm of B. H. Warner & Co. Who composed that firm at that time?

A. Mr. Wine, Mr. Swartzell, Mr. Rheem, and myself.

Q. Which of the Swartzells?

A. G. W. F.

Q. Mr. Clarence B. Rheem, Louis D. Wine, and yourself?

A. Yes, sir.

Q. It is claimed in this controversy that at the time of this transaction this property was on the books of your firm for sale. What knowledge have you as to the accuracy or inaccuracy of that statement?

Mr. KEANE: Objected to as incompetent.

A. I knew nothing about it.

Q. Did you at the time of this transaction know that the property had ever been upon your books?

Mr. KEANE: Same objection.

A. I did not.

Q. Do you now know anything on that subject?

A. Since my attention has been called to it in this controversy I ascertained that at one time a memorandum of the property was left with the firm of B. H. Warner & Co., and an entry was made upon our books that the property was for sale.

Q. Do you keep a book showing what property you have for sale from time to time?

A. We do.

Q. At the date of this transaction in April, 1896, can you tell us whether this property was on your books?

A. It was not.

* * * * * * *

1180 Q. What, in your opinion, was this property worth in the fall of 1895?

A. Between $25,000 and $30,000. The smiles of the complainant in this case will not change my opinion. I told Mr. Wine at the time the transaction was made I thought the margin was too small.

Mr. KEANE: I object to what he says he stated to Mr. Wine as clearly incompetent.

The WITNESS: I will change the form of answer. I thought at the time——

Mr. KEANE (interposing): I object to what he thought as clearly incompetent.

The WITNESS:—the margin was too small to assume the large amount of encumbrance and the expenditure of the money involved in the purchase, and so expressed myself to Mr. Wine. I went against my better judgment in buying the property. I am convinced now that we paid too much for it.

Q. After the transaction was consum-ated, on or about April 13th, 1896, what was the next active connection you had with that property, if any?

A. You mean did I try to sell?

Q. What did you do next with it?

A. I endeavored to sell the property. I offered to sell to people from time to time, but without ever getting any offer in money beyond the price we paid.

Q. In your answer it appears you have testified that you and Mr. Wine paid the interest on the existing encumbrances from the date of the sale on. What have you to say about that statement in your answer?

A. That answer was incorrect—unintentionally so. Mr. Rheem in our office keeps the accounts, and in making up our answer I called upon him for information and obtained it from him, and I only ascertained when you asked me to get the checks which had been used in paying this interest at the Provident Life and Trust Company that there had been an error.

Q. To how much of the property in question did that error apply?

A. To one of the parcels.

Q. As to the other parcels embraced in the purchase, what is the fact about the payment of interest subsequent to the purchase?

A. We paid the interest. I had not a suspicion that any one would be foolish enough to pay interest upon property to which they had no title. I have since learned——

Q. That will not do, what you learned. What reasons, if any,

existed for your paying the interest on some of this property from the date of purchase and on other portions of it at a later date?

A. No reason.

* * * * * * *

1181 Q. When and by whom, as you remember, were you first asked about this transaction after it occurred?

A. I think by Mr. Czaki within a very short time afterwards.

Q. And by whom after that instance?

A. I do not remember; probably by Mr. Wine. I do not recall.

Q. Do you remember being interrogated about it in New York by Mr. Wilcox?

A. Very well.

Q. What did you tell Mr. Wilcox?

A. I do not remember what I told him.

Q. I mean in regard to the ownership of the property.

A. I told him the facts, nothing else. I had no concealment to make. Mr. Wilcox said some one would call and see me, some lawyer who afterwards did call at the Imperial hotel.

Q. Did you deny to Mr. Wilcox or to any other person, or conceal from him or any other person, the fact that you were the owner and interested in this property?

Mr. KEANE: Objected to as leading.

A. I did not. I supposed at that time Mr. Wilcox was simply, as he asserted, acting as a friend of mine, and he so alleged.

1182–1191 Q. What did he say to you at that interview about the attorneys for Miss Godfrey?

Mr. KEANE: Objected to as incompetent.

A. I think he said a man by the name of Nash was her attorney, or Mr. Warburton with Nash.

Q. Miss Godfrey has testified on that occasion in your presence Mr. Wilcox called up Nash and his associate and told them what you had said. Is that right?

A. I think that is right.

Q. Did you object?

A. Not at all.

* * * * * * *

1192–1209 Cross-examination:

* * * * * * *

1210 Q. What was your motive in keeping in the background and permitting Mr. Wine to conduct that transaction in regard to this property?

A. No motive in the world, except I was entirely occupied with other things. I had not had time to talk with Mrs. Mussy when she came in and I referred her, as I very frequently do, to Mr. Wine. He had charge of the sales branch of the office. I did not know what he wanted to talk about. I had no motive in keeping *it* in the background. I am not inclined to do that; I come to the front.

Q. Do you not think it was safer that you did not meet Stephen A. Dutton under the circumstances?

A. I never thought of any lack of safety or insecurity of
1211 my meeting Dutton. I knew nothing about him. I had never seen him. I had no idea there would be any trouble about the matter. I thought it was an ordinary business transaction. If I had had an idea there would have been any trouble, even a small percentage of the annoyance I have had, I should never have considered the purchase of that property for a moment.

Q. Do you deny that you stated to Judge Wilson, after this suit was commenced and after the answer of Mr. Richardson was filed and after the conviction of Stephen A. Dutton, that you had said to Mr. Wine at the time of this transaction that the price at which that property was offered put you upon inquiry?

A. No, sir; I do not deny that I made such a statement as that, nor do I admit that I made the sta-ment in that particular way at all. I sent Mrs. Mussy up to see Judge Wilson and asked her to tell every fact concerning this.

Q. You heard my question, did you not?

A. If you will permit me to answer it in my own way I will answer it.

Q. I cannot prevent your making speeches here to the extent to which you desire, but I want it understood that these speeches are not made in response to any question of mine. Of course, you can continue talking as long as you have the physical impulse of voice to do it, but do not think you are answering any question of mine. Now, if you want to make a speech spread it upon the record.

A. Your style leads up to that sort of a response. To continue, replying to the question, I saw Judge Wilson, and, if I recollect it, I stated about this to him: Mr. Wine said he thought there was money in that purchase. I said to him that I had come to the conclusion, and my experience had taught me, that I had to work and any man had to work for the profits that came to him; that I had been fooled so often that I did not care to go into that transaction without consideration.

Q. Have you finished?

A. Certainly.

Q. Now, without seeking to evade the question, will you answer categorically whether you deny that you stated to Judge Wilson that at the time of that transaction you had said to Mr. Wine that the price at which that property was offered put you on inquiry?

A. I do not remember making any such statement to Judge Wilson. He might have drawn that inference. I am not responsible for that.

Q. When you insinuated yesterday that Judge Wilson's interest in this case had in any degree abated, did you know that that was false?

A. I certainly did not know that that was false. Judge Wilson has not appeared here for weeks at any session. I can only judge from his conduct.

Q. Do you not know that there has not been a step or a thing

done in this case without the knowledge and advice of Judge Wilson, and that he is the senior counsel in this case, guiding it and advising it and taking charge of it, and that I am but his junior, discharging the minor duties in the case, such as conducting these depositions and otherwise acting for him?

1212 A. I know you try very strenuously to make it appear so. You produce a letter occasionally from him or make a statement on the record.

Q. Now you are insinuating again. I want you to state on the record, if you can, what authority you have from Judge Wilson to make that statement.

Mr. DARLINGTON: I did not hear Mr. Warner's testimony yesterday, but it is quite likely I am responsible for that statement. There was a paper filed in this case, signed with Judge Wilson's name as attorney, charging Messrs. Warner & Wine with perjury. Judge Wilson of his own accord assured me that he never signed that paper and never authorized it to be signed with his name and knew nothing about it. From that date to this he has never appeared at a session of testimony, as had been previously his custom. I think I told Mr. Warner that.

Mr. KEANE: I wish to state in regard to that paper that that paper was signed by Judge Wilson's son of his own motion because of the absence of his father, and that the paper was supervised, corrected, and approved by Mr. A. A. Hoeling, Judge Wilson's confidential junior counsel.

Mr. DARLINGTON: Judge Wilson's son told me he signed the paper at Mr. Keane's request, without his father's advice, and said he was sorry for it and wished to explain it to Mr. Warner.

The WITNESS: I have a right to make a statement as defendant in this case. Judge Wilson's son stated to me Mr. Keane laid that paper before him and told him it was an ordinary motion requiring his father's signature in the routine of business; that he affixed his father's signature to it, and that he had been virtually deceived and regretted it exceedingly; that his father was in no way responsible for it. I told him I considered it absolutely inexcusable for a paper of that kind to be filed; that it was unprofessional and unwarranted. I have no way to make my statement to the court except to do it on the record while I am on the witness stand.

Mr. DARLINGTON: The record will show that Judge Wilson attended every session of the taking of depositions in this suit prior to the filing of that paper and has not done so since.

Mr. KEANE: Whatever inference the learned counsel may endeavor to have drawn from the fact that the duty has been imposed upon me of taking these depositions, I wish to say that Judge Wilson has from the beginning until the present time and at all times devoted himself to this case and guided it in all its stages, and has been, not in name merely, but actually and in fact, the senior counsel, and it seems to me that the defendants must be pretty desperate when they resort to such tactics as to attempt to injure this case in the opinion of the court by the insinuation that Judge Wil-

son has disconnected himself with it, an insinuation that is absolutely false and without foundation, and Mr. Darlington now holds in his possession a personal letter, an autograph letter from Judge Wilson, which manifests the judge's solicitude in regard to
1213 this case, and when I ask- that it be spread upon the record, for some reason, which I think is here disclosed, Mr. Darlington was unwilling to let that be done, and left me to state its contents.

Mr. DARLINGTON: I very cheerfully consent to the letter being placed on the record if you deem it material.

Mr. KEANE: I do deem it material.

Mr. DARLINGTON: This is the first communication, either written or oral, that Judge Wilson has had with me since the petition signed with his name which was not signed by his sanction or authority.

Mr. KEANE: Mr. Darlington knows that since that time Judge Wilson and myself called at his office on the return from Philadelphia——

Mr. DARLINGTON: I think he did call here once, endeavoring to get a commission.

Mr. KEANE: The commission had been issued, and we had an interview on that subject.

Mr. DARLINGTON: That was the first commission that was issued in New York. I agree as to that. With that exception I think my first position stands without challenge.

Mr. KEANE: I desire that the letter be spread upon the record, and I desire, once for all, to stamp these unfounded and unworthy insinuations as false. (See letter, p. —.)

Mr. DARLINGTON: On reflection, I am not sure but what he was at my office prior to that interview. The time Judge Wilson and Mr. Keane came here was when we were getting out the first commission to Norman Johnson.

Mr. KEANE: How paltry that is. Who cares when that or the other thing occurred? Judge Wilson is at the present time and has always been senior counsel here.

Mr. DARLINGTON: I think it preceded the date of the commission in question. I am very confident it did, and my statement that Judge Wilson has never since spoken to me about the case in any way is correct.

The WITNESS (to Mr. Keane): Is there any way of having your ungentlemanly demeanor put on the record? I cannot be subjected to this sort of thing.

Mr. KEANE: I want to add that the insinuations about Judge Wilson having retired in this case are just about on the same par with the insinuation that Mr. Warner is being blackmailed because the plaintiff has established by fourteen witnesses that he was acquainted with Stephen A. Dutton.

Mr. DARLINGTON: I want to say that I have never claimed or intimated that Judge Wilson has retired from the case. I simply stated that I was to be responsible for what Mr. Warner stated yesterday

in that connection, although I have not yet seen his testimony and do not know what he did say.

Mr. KEANE: He went even as far as Mr. Warner can go, and I do not know any one who can go any farther.

Mr. DARLINGTON: This gratuitous insult is referred to the source from which it comes as indicated by the record in the case. I refer to the record of the transactions of Mrs. Benson and Staudinger particularly. 1214

Mr. KEANE: Mr. Darlington ought to be ashamed to make that remark if he had heard the Billingsgate of his client upon the witness stand yesterday.

The WITNESS: Mr. Warner desires to make this statement: I came here to respond to a cross-examination to be conducted in a gentlemanly, decent, and professional manner. The exhibition of yourself which you have made, occupying nearly an hour, is perfectly unjustifiable, and if continued I shall feel warranted in withdrawing from the room and submitting myself to the protection of the court.

Mr. KEANE: We will leave the court to be the judge of this matter, and I only wish that we might obtain the protection of the court, for I have been at the mercy of the witness and under great self-restraint, not resenting through the whole of yesterday's session the language with which he alludes to me, which the court will see was wholly without justification and entirely unprovoked.

(At this point Mr. Hoeling entered the room.)

By Mr. DARLINGTON:

Q. Mr. Hoeling, it has just been stated on the record here that you authorized, supervised, and corrected the petition filed in this Godfrey case, charging Messrs. Warner and Wine with perjury, and signed Judge Wilson's name to it without his authority.

Mr. KEANE: Mr. Hoeling, suppose you read the record.

Mr. DARLINGTON (to the examiner): Let the record state that Mr. Keane goes to the witness and undertakes to whisper things in his ear, to which I object until Mr. Hoeling is allowed to make a statement if he desires to. Mr. Keane insists upon whispering in his ear, and I object to it.

Miss GODFREY: Mr. Hoeling, I was present.

Mr. DARLINGTON: I want to note that Mr. Keane resumes his whispered conversation with Mr. Hoeling.

Mr. HOELING: For the present I think I would prefer not to say anything about that matter. It involves a professional relation of Judge Wilson, and until I have had an opportunity to talk with Judge Wilson about it I think I would prefer to say nothing. I may, however, ask an opportunity to make a statement hereafter.

Mr. DARLINGTON: I only invited you to make that statement because they are here putting on you a responsibility which both Judge Wilson and his son deny.

Mr. KEANE: There has been no responsibility put upon anybody.

By Mr. KEANE:

Q. (To Mr. Warner): How long was it after this suit was
1215 commenced before you had an interview with Mr. E. H. Thomas?

A. It was some time afterwards. I cannot remember exactly the time. I see him very frequently. I have——

Q. (Interposing.) How many interviews with Mr. Thomas did you have upon the subject of this suit?

A. It is impossible for me to tell you. I had very little to do with him until I found my personal character was involved; then I took an active interest in the case and have done so ever since.

Q. And when you found your personal character was involved, as you put it, was when you stated under oath in answer to an interrogatory in the bill of discovery that you had never met Stephen A. Dutton in your life?

A. No, sir; I had no idea——

Q. (Interposing.) What you mean by having——

A. (Interposing.) One moment, if you please. I had no idea that my personal character was involved because of my answer regarding Stephen A. Dutton.

Q. What you mean is that your personal character is involved in that, according to the testimony of fourteen witnesses, you swore falsely when you stated that you had never met Stephen A. Dutton in your life? Is not that so?

A. My personal character is involved now because of that. That did not occur until after I commenced to take an active interest in the case. Mr. Wine assured me in the early part of this case that there was nothing in it. I supposed it was an ordinary controversy, having ordinary merits. I did not suppose it would involve a conspiracy against me or any question that could not be adjudicated in the ordinary manner.

Q. You call a conspiracy against you the fact that your statement that you never met Dutton is shown to be false from the testimony of fourteen witnesses? Is not that so?

Mr. DARLINGTON: I object to that. The witness has never said that the Dutton matter was that which first involved his personal character or first led him to take an interest in the case.

Mr. KEANE: Having received this suggestion from your counsel, will you kindly answer the question?

Mr. DARLINGTON: The suggestion ought to be one to counsel, if he is disposed to be honest.

Mr. KEANE. Mr. Darlington having relieved himself in this way——

Mr. DARLINGTON: I mean by that unless he is conscientiously endeavoring to misquote the witness.

Mr. KEANE: Mr. Darlington having now gratified himself by making such an insinuation as he has made, will you kindly, Mr. Warner, answer the question?

Mr. DARLINGTON: I call attention to the fact that the witness has never once stated it was this controversy over his acquaintance with

Dutton that first involved his personal character or first led him to give active attention to this case. That is embodied in Mr. Keane's question and evidently seems to be intended to create a false impression.

1216 (Question repeated.)

A. What I call a conspiracy against me is the production of numerous false witnesses who have committed perjury in this case with a view of gaining it for the plaintiff, who have testified falsely with the knowledge of Mr. Keane and under his direction and without his correcting them before they left the stand, parties whom he must know are disreputable, and have testified falsely either willingly or through mistake.

Q. Do you call Timothy J. Kane disreputable?

Mr. DARLINGTON: Objected to as not calling for any evidence, and I suggest that we have had altogether too much irrelevant matter here, and I propose that we now proceed to examine this witness as far as counsel may be disposed to examine him about relevant things.

Mr. KEANE: And I suggest if Mr. Darlington will be less nervous and refrain from interrupting we will get finished much sooner.

Mr. DARLINGTON: I will promise to make no more interruptions to anything that is competent, but I must object to incompetent questions.

By Mr. KEANE:

Q. I suppose that any witness who would testify that he had seen you and Dutton together would by that fact, in your opinion, be considered disreputable?

A. I did not say that. I said——

Q. (Interposing.) Would you not consider any witness disreputable who would testify that he had seen you and Stephen A. Dutton together?

A. I should consider him either willingly lying and being disreputable in that way or I should consider such a witness being very greatly mistaken. Such a mistake, in my opinion, could not occur without the cultivation of false impressions by careful training.

Q. You read the answer that was sworn to in this case by Louis W. Richardson to the original bill in equity, did you not?

A. I doubt very much whether I did. I am unable to say, but whether I had read it or not, I should not have corrected it or suggested a correction.

Q. You really doubt whether you did or not?

A. I doubt very much whether I did read it until after the thing was filed.

Q. You assisted Mr. Thomas in the preparation of that answer, did you not?

A. No, sir; I did not.

Q. What was the occasion of your seeing Mr. Thomas in regard to the suit?

A. I pass Mr. Thomas in the hall almost every day.

Q. Did you understand my question? I will ask the examiner to read it again to the witness.

Mr. DARLINGTON: Just finish your answer.

(Question repeated.)

A. If I saw him at all in regard to the suit the occasion was the suit itself or some——

1217 Q. (Interposing.) The suit itself?

A. Certainly.

Q. And it was to give him information, was it not, to give him facts of which you had knowledge?

A. No, sir; Mr. Wine attended to that more largely that I did.

Q. Did you ask him any questions at all in regard to the facts of which you had knowledge?

A. If I went to see him on business I made a statement of all the facts; he would not need to question me.

Q. Do you or do you not remember whether you did?

A. I cannot remember; I would see him every day or nearly every day; my office is on the second floor—my private office; I go there several times a day, and I meet him on the stairs or in the hall.

Q. You saw him in regard to this suit prior to the filing of the answer by Richardson to the original bill, and yet you are unable to state whether or not you discussed the facts in the case?

A. I did not say I saw him prior to the filing of this answer; I said I did not assist in the preparation of the answer and I thought I did not see him; I may have done so, but I do not think I did.

Q. Do you deny that you saw Mr. Thomas in regard to this suit with Mr. Richardson prior to the filing of that answer?

A. I am very positive I did not see him with Mr. Richardson.

Q. So that the following testimony of Mr. Richardson is false?

A. I would not put it that way.

Q. Namely: "Q. Was Mr. B. H. Warner ever present at any interview you ever had on the subject of this suit with Mr. E. H. Thomas? A. Yes." That is false, is it?

A. I would not say that was false. If Mr. Richardson swore I was there I would take his statement for it; but I say I have no recollection of being there; I am quite positive I was not there before his answer was filed.

Q. And this testimony you would also pronounce false by Mr. Richardson:

"Q. How many interviews had you with Mr. E. H. Thomas on the subject of this suit previous to the time when you swore to your answer to the original complaint, November 30th, 1896?

"A. I had quite a number; I cannot specify the exact number, though.

"Q. Can you approximate?

"A. No.

"Q. Did you ever have a conversation with Mr. Thomas on the subject of this suit at which Mr. Warner or your uncle Wine was not present?

"A. Yes, sir.
"Q. How many?
"A. I cannot remember.
"Q. Was not Mr. Warner or Mr. Wine both generally present at the interviews you had with Mr. E. H. Thomas?
"A. Yes."

The WITNESS: I would not pronounce that false. He may be correct, but I say I have no recollection of being there before that answer was filed. I am quite positive I was not there. I am quite positive that I did not see Mr. Thomas about this case until after the answer was filed.

Q. And you would also pronounce this testimony of Mr. Richardson false, would you?

1218 The WITNESS: I would be obliged if you would put your questions in a little less offensive form. "Incorrect" will suit the purpose better.

Mr. KEANE: My questions are not offensive, but I call your attention to the fact that throughout this examination your answers have been studiously offensive to me.

The WITNESS: Probably because I state the truth.

Mr. KEANE: You do not perceive that you are again making yourself intensely and intentionally offensive.

The WITNESS: I perceive you are leading up to the same style of procedure which has characterized your connection with this case from its in*spec*tion.

Mr. KEANE: And yet you object to a question which no one could style anything but regular.

The WITNESS: Not at all. I withdraw my objection and hope you will proceed.

Mr. DARLINGTON: I object to it. Counsel has studiously framed his question as though the witness had declared false the testimony of other witnesses when the witness has repeatedly stated he has not said so.

Mr. KEANE: Continue your duet.

The WITNESS: This is undignified for a member of the bar. I wish one of our justices could observe you at this session. Your conduct is sufficient to disbar you on sight, in my opinion.

Mr. KEANE: Have you finished your obnoxious language?

The WITNESS: I have finished my plain statement of facts until you ask for some more.

Mr. KEANE: I will read this to you:

"Q. Do you swear that neither B. H. Warner nor your uncle Wine knew the contents of your answer to the original bill prior to the time the same was filed in court in this suit?
"A. No; I do not swear they had no knowledge of that.
"Q. Is it not a fact that they did have knowledge of it?
"A. Yes; they had knowledge of it."

(To the witness:) I suppose you pronounce that false, do you?
A. No, sir; I do not.
Q. That is true, is it?
A. I presume it is true.

Q. That you did have knowledge of Richardson's answer prior to the time it was filed?

A. If he says so I presume I did. I have no recollection of it, however.

Q. Did you not just state the reverse before I read this testimony that I have just quoted?

A. I would like to have you ask that a little plainer.

(Question repeated.)

A. I think not.

Mr. DARLINGTON: If Mr. Keane will read the cross-examination of Mr. Richardson he will see that he admits he only inferred that Mr. Warner had seen his answer because Mr. Wine had seen it.

Mr. KEANE: The cross-examination will speak for itself if there is any such statement in the cross-examination. The witness
1219 has stated positively, categorically, as I have read, being an adverse witness, and whatever he may have stated in answer to leading questions subsequently the court will be able to read and to weigh.

The WITNESS: Undoubtedly.

Q. When did you first learn of the conviction of Stephen A. Dutton for having defrauded the complainant of this property?

A. Indeed, I could not tell you. I think it was some time in 1896.

Q. You learned of it at the time he was convicted, did you not?

A. I presume I saw it in the press. That is the way I was informed of it.

Q. You say that your young clerk, Mr. Dodge, had gone on to that trial with your knowledge, and you did not take sufficient interest in the trial to ascertain how it resulted?

A. I did not say my young clerk, Mr. Dodge, went on. You misquote me. Mr. Dodge is not so young as to be subjected to that sort of a youthful description which would make him appear either ridiculous or unreliable.

Q. Answer my question, leaving out, if you choose, the words of description of Mr. Dodge, and answer the substance of the question.

A. If you will permit me I will. You have interrupted me, and that has prevented me from answering. I knew very little about Mr. Dodge's testimony there.

Q. Did I ask you that question?

A. If you will permit me I will finish my answer. Your rude interruptions are absolutely inexcusable. I learned of the conviction of Stephen A. Dutton through the public press. I may have talked with Mr. Dodge on the subject of the trial, but I am sure he did not tell me that Mr. Dutton was convicted. I do not know whether he knew it at that time.

Q. Are you aware that you have not answered my question?

A. No; I am not. I do not see how I can answer it with your interruptions.

(Question repeated.)

Mr. KEANE: Did you take sufficient interest in the trial to ascertain how it resulted?

A. I had no particular interest in this trial beyond that of any other citizen who desired to see any criminal punished.

* * * * * * *

1220 Q. Will you kindly state what took place between you and Mr. Wine at your first interview on the subject of this property?

A. When Mr. Wine asked me if I did not want to buy that property, I think he asked me personally about it. Then he said within a few moments he would like to go in and buy it. I told him I would want to consider the matter. I told him I had been stuck in a good deal of property that I bought where I thought it was cheap or where I thought we could make a profit out of it right away, and that I did not see any profit in that property sufficient to warrant our making so large an investment and assuming so much liability; that I would make some inquiry about it and think over it during the day and let him know about it in the afternoon, and that is practically all that occurred.

Q. And in the afternoon you told him you would go into it with him; is that so?

A. In the afternoon I told him I would go into it; yes, sir; I think it was.

1221–1224 Q. And at that time he had already purchased it himself, had he not?

A. Yes, sir; he had. I have since found out that he tried to get other people to go in with him, but did not succeed. I did not know that at the time; he did not mention it.

Q. You were not asked that, were you?

A. No, sir; but I thought you wanted the truth.

Q. I do not want you to make voluntary statements that I do not call for, however interesting they may be, and you know that your duty is simply to answer questions.

A. My duty is to tell the truth, I know that.

Q. Your answer is, therefore, false, is it not, where you state that after this property had been offered you by Mrs. Mussy and the interview had with her mentioned in the answer, thereupon, after some conference between these defendants, they agreed to purchase that property at the price named?

A. I think not.

Q. That is false, is it not?

A. I would not say that was false. If you will allow me to look at my answer I will be better able to judge of the correctness or incorrectness of it. What portion of my answer is that in? As you have asked me if that was false, I would like to refresh my memory, with your permission.

* * * * * * *

1225 Q. Do you remember after the conviction of Stephen A. Dutton, in December, 1896, writing to J. Robert Foulk, the trust officer of the Provident Life and Trust Company, with a view to having the mortgage foreclosed upon this property of the complainant?

A. I wrote to J. Robert Foulk, as I remember—I would like you to permit me to refer to that letter.

Q. Read this, and see if that refreshes your recollection in regard to what you did write Mr. Foulk (handing witness a letter).

A. (After examining same.) This seems to be a correct copy, which I will read:

"WASHINGTON, D. C., *December 17th*, 1896.

J. Robert Foulk, Esq., the Provident Life and Trust Company, No. 409 —, Philadelphia.

DEAR SIR: Your letter at hand. I want to see you with reference to the property you mentioned. If you come to Washington Christmas week, I will wait until you come; otherwise, I will run over and see you before that time. There may be some reasons why it might be advantageous to sell out the property on which your loan is secured, and I want to see if some arrangement cannot be made to reduce the cost of sale.

Yours truly, B. H. WARNER."

1226&1227 Q. That is the letter you wrote?

A. I wrote that letter; it is practically correct.

Redirect examination.

By Mr. DARLINGTON:

Q. What were the reasons you referred to in that letter which might make the sale desirable?

A. As I remember at the present time, I had heard of various intimations about this suit, and that values had been placed upon this property a great deal in excess of what it was worth. One reason was I wanted to have that value tested.

Q. Do you recall any other?

A. I do not at this present moment; no, sir.

Q. Who was paying the taxes and interest on that property at that time?

A. B. H. Warner & Co.

Q. What overtures or offers, if any, was the complainant making to defray the expenses of keeping down the interest and paying the taxes while the suit was in progress?

A. I did not hear of any.

Q. Did you remark to Mr. Wine, while this purchase was in progress or at any other time, that the price at which the property was offered put you upon inquiry at the time of this transaction?

Mr. KEANE: Objected to as leading.

A. I did not.

Mr. KEANE: I move that the answer be stricken out.

Q. What, if anything, was there about the price of the property which suggested to you or led to any remark by you that inquiry was appropriate or proper other than such inquiry into the condition of the title and similar matters as obtain in such sales?

A. There was nothing suspicious about it. It was simply an ordinary sale.

Q. What, in your opinion, was that property worth at that time?

A. I stated yesterday between $25,000 and $30,000, I thought then. I think now we paid too much for it.

Q. Upon what was that valuation based?

A. Upon the general knowledge of value of property. I cannot tell you exactly. We get a kind of an idea as to the worth of property from dealing in it.

Q. What is there which has led you to change your estimate of its value?

A. I have had occasion since to talk a great deal with a great many men about this property.

Mr. KEANE: Objected to as improper redirect examination. The matter was gone into in chief, and it is improper on redirect.

The WITNESS: It is also based upon our failure to ever get any money offer over and above what we paid, with expenses and interest added, for the property.

* * * * * * *

1228 Recross-examination.

By Mr. KEANE:

Q. You did not suppose that a purchaser could be found for that property with a suit such as this hanging over it, did you?

A. I did not know but what some arrangement might be made to offer that property at auction. The complainant in this case seems to think it was so much more valuable than we did that I thought some arrangement might be made to test the question. We offered in this suit, as appears by the record, to give this property to the complainant in this case upon first learning that she had been defrauded by Mr. Dutton upon being made whole and to permit her to have the balance—any balance that might be obtained. That appears on the record. I will say that offer was made.

1229 Q. Was it made in writing?

A. It was made by my counsel before this controversy had arisen in this suit as to my personal character or when my personal character was attacked; after that no compromise would be tolerated or considered.

Q. You know, do you not, that as soon as you heard the proof in this case, after listening to the testimony of John B. Wight and Mr. James Fitch, and while Mr. Fitch was on the stand and John Joy Edson in the room, who was about to go on the stand, that in a sudden panic, after consultation with your counsel in the next room, to which you hurriedly retired, you came back and he thereupon made the entry on the record which appears in this case and which the complainant promptly declined.

Mr. DARLINGTON: I think the record will show that this question has no foundation in fact.

A. I do not remember any such occurrence whatever; there was no panic—no sudden panic; the presence of all those gentlemen and the giving of any testimony they might give would not create any panic in my mind or in the mind of my counsel.

* * * * * * *

1230 T. CONRAD DODGE, a witness produced on behalf of the defendants Warner and Wine, being first duly sworn, was examined and testified as follows:

By Mr. DARLINGTON:

Q. You have already been a witness in this case?

A. I have.

Q. You testified, I believe, that you have change of the sales book of B. H. Warner & Co.?

A. I did.

Q. Please state whether in April, 1896, the property in controversy in this suit was on your books for sale.

Mr. KEANE: I object on the ground that it appears by the testimony in this case that the property was duly placed upon the books of B. H. Warner & Co. for sale, and that it was never withdrawn by the owner nor was any notice ever served or given or made by B. H. Warner & Co. that they no longer considered the property upon their books, and the printed notice in evidence, moreover, establishes that even under the rule of their office such testimony as this now offered is incompetent.

A. It was not.

Q. Are your sales books printed or written?

A. Printed.

Q. Have you your sales books for the period covered—April, 1896?

A. Yes, sir.

Q. Is that the book you have in your hand?

A. That is the book.

Q. When was this printed?

A. It was ordered in February, 1896, and paid for in March, 1896.

Q. When was it issued?

A. About the first of March—between the last of February and the first of March.

Q. You say that book does not contain the property in controversy here?

Mr. KEANE: Objected to as immaterial, irrelevant, and incompetent.

A. It does not.

1231 Q. Can you explain to us how the property disappeared from your sales book?

Mr. KEANE: Objected to as incompetent, immaterial, and irrelevant.

A. Before getting up a sales bulletin I have a blank form which Mr. Warner introduced before, showing that we ask the property-owners to reply within ten days or the property would be stricken off our book. During December and January I sent out our letters, and if I did not hear from any of them their property was stricken off our book, and because Mrs. Godfrey did not reply is the reason I did not put it in this bulletin.

Mr. KEANE: I move that that answer be stricken out as incompetent, irrelevant, and immaterial.

Mr. DARLINGTON: I offer the bulletin in evidence.

The same is marked Exhibit L. D. W. No. 1, and is hereunto attached.

Cross-examination.

By Mr. KEANE:

Q. Do you keep copies in your letter books of letters you send out?

A. No, sir; it is just a form which we have; it is not copied.

Q. Can you remember every person to whom you send a notice?

A. No, sir; I do not. I know I send to every person who has property on our books for sale.

Q. You think you do?

A. I know I do.

Q. You think you do, but you do not remember actually sending one out to each person?

A. No, sir; I do not remember each individual, because we have thousands of names on the book, but I send to every person on the list.

Q. That is what you think?

A. Yes, sir.

T. CONRAD DODGE.

Subscribed and sworn to before me this 16th day of July, 1898.

ROB'T L. MILLER,
Examiner in Chancery.

* * * * * * *

1232–1240 LOUIS D. WINE recalled.

By Mr. DARLINGTON:

Q. Something has been stated in this testimony about an alleged remark made to you by Mr. Warner at the time this purchase of the Godfrey property was in progress as to the price at which it was offered, which put you on inquiry. Please state whether such a remark was made.

Mr. KEANE: Objected to on the ground that the question does not correctly state or embody the testimony referred to, and further objected to on the ground that it is not competent.

Mr. DARLINGTON: As the notes have not been written out and I

am interrogating Mr. Wine only from memory, will Mr. Keane please inform me in what respect the question is inaccurate?

Mr. KEANE: I would prefer to have the examiner read the question to Mr. Wine.

The question is as follows:

"Q. Now, without seeking to evade the question, will you answer categorically whether you deny that you stated to Judge Wilson that at the time of that transaction you had said to Mr. Wine that the price at which that property was offered put you on inquiry?"

Mr. DARLINGTON: Now, please tell us whether Mr. Warner ever made any such statement to you as is indicated by that question.

A. Not to my recollection.

Q. Was anything said between you and him about the price being suspiciously low or your being put upon inquiry?

A. No, sir.

No cross-examination.

LOUIS D. WINE.

Subscribed and sworn to before me this 16th day of July, 1898.

ROBT L. MILLER,
Examiner in Chancery.

The defendants here rested.

* * * * * * *

1241 JOHN JOY EDSON, a witness produced in surrebuttal on behalf of the complainant, being first duly sworn, was examined and testifies as follows:

By Mr. KEANE:

Q. You testified when last on the stand as follows:

"Q. State whether or not Mrs. Mussey ever made an application to you for a loan on the property at the northwest corner of New Hampshire avenue and Q street.

"A. She did.

"Q. Will you state what she said to you and what you said to her?

"A. She said she wanted to get a loan of $25,000 and pointed out this property on the plat book and I told her I thought she could. It was a very fine piece of property and I knew it very well, and I told her how it was subject to official valuation; that I thought the property was worth $40,000."

Will you kindly indicate the property on the plat book to which you referred in your testimony by stating the square and lot numbers?

Mr. MATTINGLY: Objected to as not rebuttal.

Q. (Referring to plat book.) Square 134. It included all that vacant property west (indicating).

Q. What were the numbers of the lots?

A. I think it included these four lots (indicating).

Q. What were the numbers?

1242 A. They are numbered here 1, 2, 3, and 66. It came over to this brick building here (indicating), and included all this vacant property west, all that is west of that brick house (indicating).

Cross-examination.

By Mr. MATTINGLY:

Q. Did it include lot 65?

A. No; I do not think it did. That goes pretty near to that brick building, does it not? That belongs to the brick building on the north.

Q. Did Mrs. Mussey have a plat of the property?

A. We looked at the plat book when she came in.

Q. Were you familiar with the property?

A. I knew where it was located pretty well, and am about as familiar as I am with any piece of property around Washington generally.

Q. Mrs. Mussey says that the property she submitted to you included also the property designated there on the map as the Kidder property.

A. You mean that brick house there on the north, on N. H. Ave. (indicating on plat book)?

Q. Yes.

Mr. KEANE: And the lot next to it—the two additional lots.

Mr. MATTINGLY: Lots 64 and 65?

The WITNESS: That was not my recollection of it.

Q. This occurred over two years ago, did it not?

A. Yes, sir. The conversation she had with me did not last over five minutes. I do not know that it lasted that long. I remember there was a brick house on it and a great deal of vacant ground, and it was right on the corner, fronting on both streets. I thought it was a pretty desirable piece of property.

Q. What kind of a brick house is on it?

A. I know the house. It is a house fifteen or twenty years old, not a large house. It is rather ordinary, but it still rents, I imagine, and rents pretty well.

Q. Have you seen the house since her visit to you?

A. I have passed there many times. Dr. Coburn lives near there, on Q St., where I call frequently.

Q. You mean to be understood as saying that Mrs. Mussey did not in her submission to you include the Kidder property?

A. That is my recollection. I should be very glad to say otherwise if I thought she did. That is a very fine house.

Q. The Kidder house?

A. Yes, sir. I do not think she submitted that to me. My recollection is the lot extended, including that vacant ground, up to the Kidder house.

Q. And you never thought anything of the matter within two years' time?

A. No; I did not think of it afterwards at all, and gave the matter no further attention until this matter was brought up here in this suit. I thought it included all the vacant ground up to the wall of this brick house.

Q. Part of lot 65?

A. I do not know whether——

Q. (Interposing.) You can see it on the plat?

A. I think it went from here (indicating on plat), in-
1243–1250 cluding this vacant property, and my impression was at the time it went over to the south wall of the brick house. I see there is a strip there; that the brick house is built on part of lot 65.

Q. You thought it included up to the south wall of the Kidder house?

A. Yes, sir; my impression was that it went up to the house, but I see that the brick house laps over on that lot 65 (indicating).

Q. Did you make any valuation of the property at that time that you would have acted on without going any*thing* further?

A. No, sir. This was only preliminary, and, as I say, she was not there over five minutes, and I told her it would have to be submitted to our valuation committee. She was in haste, and I told her it would be impossible to act upon it as soon as she wanted, because it would have to be referred to the committee, and by the committee reported to the executive committee, and by them considered and acted upon.

Q. You have merely expressed an off-hand opinion, as I understand you, knowing the matter, if an application for a loan had been made, would have to be referred to your examining committee or a valuation committee, or whatever it is?

A. I gave her a preliminary opinion, such as I would give in any preliminary application. Of course, I am not one of those who value the property.

Q. Who composed your valuation committee at that time?

A. Mr. Wine, Mr. Hamilton, and Mr. Fox.

Q. Mr. John A. Hamilton?

A. Yes, sir.

Q. And Mr. Albert F. Fox?

A. Yes, sir.

Q. Could you have made any loan for the trust company, based upon your own valuation, larger than the valuation put upon it by your committee?

A. Could I have done so?

Q. Yes.

A. No; not larger than that fixed by their valuation. Two-thirds of the value is what is generally loaned.

Q. Would your opinion as to any valuation you might have put upon the property have been changed if materially larger than the valuation put upon it by that committee?

A. My opinion is frequently changed by their report. They go out and make a very careful examination. They go through the property when it is improved.

JNO. JOY EDSON.

Subscribed and sworn to before me this 19th day of July, 1898.
ROB'T L. MILLER,
Examiner in Chancery.

* * * * * * *

1251 *Opinion of Justice Hagner.*

Filed Jan. 19, 1899.

Supreme Court, District of Columbia.

LILY ALYS GODFREY
v.
STEPHEN A. DUTTON & Others. } No. 17631. Equity.

The original bill filed the 1st of September, 1896, against Dutton and his wife, Richardson, Czaki, and Mary Alice Godfrey, alleged that the complainant and her mother had conveyed to Stephen A. Dutton the lots 1, 2, 3, and 66, in square 134, and lot 40, in square 92, in Washington city, subject to existing trusts, in consideration of the conveyance of certain leasehold and other property in New York city by Dutton to the complainant, and his assumption of the trusts on said lots and his discharge of certain judgments, according to the terms of an agreement between Dutton and the complainant, dated 26 March, 1896; that on 13 April, 1896, Dutton and wife conveyed lots 1, 2, 3, and 66, in square 134, to the defendant Richardson, subject to the existing trusts, and on information and belief she charged that Richardson parted with no valuable consideration for the lots, and was not an innocent holder for value, but has no interest, legal or equitable, in the property, and therefore the transaction between him and the Duttons was without consideration and fraudulent and should be set aside. It charged further that all the deeds from the complainant and Mary Alice Godfrey to Dutton were obtained fraudulently and without consideration and should be set aside and the title decreed to be still in the complainant.

The bill at length charged that Dutton had failed in every particular to carry out said agreement, that his property had been placed in the hands of a receiver in New York, and he had been indicted on charges of false pretenses in connection with the transaction set out in the bill; and it prayed that by decree the title to the lots in squares 92 and 134 should be established in complainant, subject only to the legal trusts thereon.

After Richardson had answered several applications were granted to amend the bill. Under the second leave an amended and supplemental bill was filed on the 17th of January, 1897; to which
1252 the defendants Warner and Wine were made defendants.

Among the new matters introduced were the averments that before March, 1895, the lots in square 134 had been by the defendant Godfrey put in the hands of the firm of B. H. Warner & Co., real-estate agents in Washington, for sale at the sum of $55,000, and that they undertook to procure a purchaser at that price for a com-

mission; that said Mary frequently received communications on the subject from the firm, who were still her agents, to sell the lots on the 10th of April, 1896, at which time the lots remained on their books. The bill set forth at length many particulars of the fraudulent representations and acts of Stephen A. Dutton, who it was alleged at the time of the agreement was residing in a handsome and expensive house, luxuriously furnished, in New York city, a few blocks from the house of complainant's mother, which he stated he owned, and these circumstances induced the complainant to believe his other representations in respect of his wealth and ability to perform his contracts, such as the great value of said leasehold interest, the profitable character of his business, his ownership of much valuable property elsewhere than in said city, and that he was worth several millions of dollars, etc.

That complainant on 26th of March, 1896, joined in the execution of a conveyance of the lots to Dutton, and subsequently, about the 6th of April, when he came to complainant's home in New York city and stated there was some defect in the acknowledgment of the previous deed, complainant immediately signed other deeds then presented by Dutton and delivered them to him; that Dutton's representations of the value of the property he had conveyed to her and his promise to afford occupation to her brother about the leasehold property and the very small revenue received from the only buildings on lots one and sixty-six ($45 per month, not enough to keep down the taxes) were the considerations largely instrumental in inducing her to enter into the agreement.

That shortly after said agreement Dutton proceeded to Washington and entered into negotiations with Warner and Wine, or the firm of B. H. Warner & Co., through one Ellen S. Mussey, a lawyer, and applied for a loan on said property; that Mussey after conferring with the firm reported to Dutton that a loan of $25,000 to $30,000 could readily be negotiated upon it, and if he would return the following week she would have everything in readiness; that he returned about the 10th of April, and, going to the office of the firm, signed a paper agreeing to sell all the lots for the grossly inadequate sum of $25,000.

She is advised and charges that it was the duty of Warner and Wine to notify the complainant or the said Mary Godfrey that Dutton had signed such a contract, and to inquire whether or not there existed any circumstance why the sale at such a price should not be consummated, whether Dutton had acquired the lots in good faith, in view of the fact of his suddenly endeavoring to part with them for a consideration so grossly inadequate,
which fact alone was sufficient to compel them, as prudent
1253 and honest men, to make the most searching inquiry; that
they made no such inquiry or disclosure of anything relating to the transaction, but purposely concealed it, although they knew the residence of the said Mary; that for the purpose of concealing their connection with the transaction they caused the title to be conveyed to Richardson by deed from Dutton and wife, which was recorded the 13th of April, before the deed to Dutton had been recorded;

that Richardson is a nephew of Wine, a young man of little business experience, a clerk in the employ of the firm, totally without means and dependent entirely upon the bounty of his employers, and that he was selected for these reasons as their tool for the consummation of their scheme to get possession of complainant's property for the grossly inadequate sum named, and that he parted with no consideration for the property, and never had any legal or equitable interest in it, but was a mere naked holder of the title; that all moneys then paid to Dutton, if any were really paid to him, were advanced by Warner and Wine, who now pretend they are the owners of said lots and are now collecting the rents from the house thereon; that Dutton has been convicted and is now undergoing imprisonment in Sing Sing upon the indictment referred to in the original bill. She further states that she is young and inexperienced and fully relied upon and implicitly believed the various representations of Dutton to be true and never doubted or suspected his perfect good faith; that she employed the attorneys recommended by him and no other, and she received from them assurances that Dutton's title to the New York property was good; finally, that Richardson refuses to reconvey the property to her, though requested so to do.

The bill then prays that the deeds to Dutton and those from Dutton and wife to Richardson conveying said lots may be set aside and vacated, and the title held to be in the complainant and the defendant Mary; that there may be an accounting by Warner and Wine for the rents received by them from the house, and for a receiver and injunction.

Appended to the bill are forty-nine special interrogatories to which the defendants Warner and Wine are required to reply under oath with their answers. By a further amendment the complainant exhibited nineteen additional interrogatories, with twenty-six supplemtory questions, making ninety-four in all; a number unprecedented so far as my experience extends.

The defendants Wine and Warner filed their sworn answers to the bill and to the interrogatories in detail. In the interest of economy of time it is sufficient to say here that every incriminatory charge against them individually or as a firm is positively denied.

It became necessary for the complainant to establish her allegations by proofs, and under various commissions a vast amount of testimony was returned. This was read before the court, fully commented upon by the counsel, and has since been carefully examined. It is not usually conducive to any good end to enter upon a detailed examination of all the testimony, and its great volume
1254 would render such a course practically impossible in the present instance; I propose rather to give my conclusions after a painstaking examination of the evidence.

The legal principles applicable to such charges as are here presented are well settled.

Against Warner and Wine there are allegations of actual and intentional fraud. The original bill charged that no money passed

to Dutton when he made the deed; that the alleged consideration was fictitious, and Dutton's interest in the property remained unaffected by the pretended sale, and in the amended bill the complainant declines to admit that any money was really paid to Dutton, but again charges direct fraud against the defendants in the purchase. A plaintiff making such charges is required to prove them as alleged, and cannot rely on the proof of other circumstances which might amount to a case for relief under a distinct head of equity. 15 Howard, 42; Eyre *v.* Potter, Foster *v.* Boody, 1 Curtis C. C., 206.

On a bill to set aside a conveyance as fraudulent the recitals in the deed are esteemed as *prima facie* correct. The burden of proof rests upon the party assailing the deed, and "if he does no more than create an equilibrium, he fails to make out his case. Mere suspicion leading to no certain result is not sufficient, and legal titles will not be diverted upon mere conjecture or evidence loose or indeterminate in its character." "The proof must be clear and satisfactory, so strong and cogent as to satisfy a man of sound judgment of the truth of the allegations." Bump on Fraudulent Conveyances, # 575, 581, 584.

"The law does not presume fraud, but it must be established by evidence. The difficulty of demonstrating the intention from the acts of the parties furnishes no reason for the presumption of a fraudulent intent." 73 Indiana, 472, Sherman *v.* Hogland. It is not enough to create a suspicion of wrong. 52 N. Y., 274, Jeager *v.* Kelley; Clark *v.* Krause, 2 Mackey, 565.

The same rule obtains in actions at law where the defendant is charged with acts involving moral turpitude amounting to fraud. 8 Maryland, Corner *v.* Pendleton, 337.

In speaking of an attempt to set aside the title of a purchaser upon allegations of fraud, the supreme court says, in Bowie *v.* Childs, 10 Peters, 210: "Strong as a plaintiff's equity may be, it can in no case be stronger than that of a purchaser who has put himself in peril by purchasing a title and paying a valuable consideration without notice of any defect in or adverse claim to it, and when, in addition, he shows a legal title from one seized and possessed of the property purchased he has a right to demand protection and relief which a court of equity imparts liberally. Such suitors are its most especial favorites."

Tested by these principles, it can scarcely be contended that the evidence establishes the existence of fraud in the incidents directly attending the purchase by Warner and Wine. On the contrary, the evidence of every witness who was in any manner connected
1255 with the immediate transaction negatives any such charge, and shows a sale and purchase in the usual form from the record holder of a title pronounced, after careful examination by competent persons, to be good in the seller against the world. Under such circumstances the fact that the seller had obtained his deed from his immediate vendor by conveying to her valueless title to property in New York, with knowledge of its worthlessness and with the design to cheat her, could have no effect to defeat the title of an

innocent purchaser at the suit of the party defrauded. This general principle is thus referred to in 10 Pa. Stat., 285, Blight *v.* Schenck: "The first reflection which strikes us is that if a title may be avoided under such circumstances no purchaser is safe. This is a strong case, for here the defendant is an innocent purchaser for value. He invests his money on the faith of the solemn acts and declarations of the plaintiff. These acts and declarations were made before a magistrate duly empowered for that purpose, certified to by him in proper form, duly recorded on the records of the country. Moreover, it appears at the time of the purchase the vendee was in actual possession of the premises. There was nothing to put him (the purchaser) on his guard. It must require a very strong case, as the plaintiff in error justly contends, to permit a grantor to aver, against the confidence thus reposed in his acts and declarations, exactly the opposite of those acts and declarations, to say, after acknowledging before the proper officer of the law that he delivered the deed, that he never delivered it, and, having acknowledged that he received the purchase-money, that he never received it."

In Carusi *v.* Savary, 1 Appeals D. C., 330, it appeared that Savary conveyed to Williams a house and lot in consideration of the assignment of the claim, with an agreement that if the assignment was not collected within a day limited the sale should be held void, and the intervening occupation by the grantee should be considered a renting at a fixed rate. The deed and the assignment were deposited in a box in a safe deposit company hired in the joint names of the parties, in which an envelope containing the two papers was deposited, to which each party should have access, but the paper was not to be removed except in the presence of both parties. Subsequently Williams, without the knowledge of Savary, removed the envelope, substituting one of similar appearance, and, producing the deed, procured from Burton a loan on the property of $3,500, which he professed to secure by deed of trust, which was recorded with the abstracted deed. Immediately upon the discovery of the fraud Savary instituted a suit against Williams and the trustee and beneficiary for the cancellation of both deeds, and for an injunction forbidding the defendants from setting up their title. The court below granted the relief prayed, but on appeal this decision was reversed. The appellate court, while lamenting the great fraud, held that the complainant "was the victim of his own misplaced confidence, for which it is not just that he should make others suffer who are wholly innocent. He thought that he was securing himself and took
1256 what might be regarded as remarkable precautions for the purpose." He "plainly put it in the power of Williams to violate their private agreement of which third parties could have no knowledge." "Those who take risks should take the consequences of the risks and should not seek to visit them upon innocent third parties." "As between the immediate parties, equity will not permit these to suffer who have honestly confided in others and whose confidence has been betrayed. Much less will it permit them to retrieve their loss at the expense of those who, relying upon their actions and representations, have become the innocent victims of

the fraud, which only those actions or representations enabled to be perpetrated."

In Dair *v.* U. S., 16 Wallace, 1, and in Butler *v.* U. S., 21 Wall., 72, in which sureties who had signed and delivered revenue bonds, with blanks left for the amount of a designated penalty and the names of the other designated sureties which the principal promised to insert, sought to be discharged because a larger penalty and different sureties were inserted in the bond without their approval. But the court held the sureties were not entitled to be relieved, their own act having placed it in the power of the principal to perpetrate the fraud complained of, thereby recognizing the wisdom of Lord Holt's remark in Hern *v.* Nichols, 1 Salkeld, 289, quoted by the Attorney General: "Seeing somebody must be a loser by this deceit, it is more reason that he that employs and puts a trust and confidence in the deceiver should be a loser than a stranger." In a recent case in this court, Pile *v.* Wurdeman, No. 18378, equity, a real-estate agent who had been making investments for a spinster obtained possession of a note secured by deed of trust, in anticipation of her absence during the summer, for the alleged purpose of allowing the debtor to endorse upon it the payment of the interest. There had been no assignment upon the note to the owner, and it was overdue when she received it. Upon the death of the agent, insolvent, a few months afterwards, the owner found he had transferred the note to a third person, who had paid value for it. On a suit by the owner against the transferee it was held the conduct of the owner in committing the note to the agent, with no indication thereon of her ownership, enabled the agent to commit the fraud against his employer, and that the innocent holder should not be visited with the result of her carelessness. In behalf of the complainant it was sought to show that the purchaser was an intimate friend of the agent and must have known of his insolvent condition, but these circumstances were held insufficient to put the purchaser upon inquiry, in the just meaning of that expression.

The complainant, however, relies upon sundry incidents alleged to be of a suspicious character, which, though collateral to the main transaction, sufficiently notified the defendants that they were purchasing a doubtful or fraudulent title, or at least should have placed them upon inquiry and warned them from buying under the circumstances without full examination of Dutton's title and of
1257 his rights to sell the property on the terms and in the manner proved in the case, and that, even if the defendants had no actual or direct notice to that effect, the circumstances referred to furnished the defendants with what is sometimes called constructive and sometimes implied notice that the transaction was one of doubtful propriety.

"Constructive notice," says Justice Story, 1 Eq. Juris., # 399, "is in its nature no more than evidence of notice, the presumption of which is so violent that the court will not allow of its being controverted; or, as has been elsewhere defined, constructive notice is knowledge imputed by the court on presumption, too strong to be rebutted, that the knowledge must have been communicated."

Vice-Chancellor Wigram, in Jones *v.* Smith, 1 Hare, 43, states that the cases in which constructive notice has been established resolve themselves into cases where, 1st, the party has had actual notice that the property was in fact in some way charged, encumbered, or in some way affected; and, 2nd, where the court has been satisfied from the evidence that the party had designedly abstained from signing for the very purpose of avoiding notice; and in the latter class he states, agreeing with Sir Edward Sugden, 3 Vend., 472, that unless there appears a fraudulent turning away from the facts or fraudulent and wilful blindness, as distinguished from a mere want of caution, "the purchaser will be considered in equity, as in fact he is, a *bona fide* purchaser without notice."

In 6 Wall., 91, Wilson *v.* Wall, the Supreme Court adopts the language of Sugden as to the disposition of the court to restrict the application of this presumption, as follows: "In Ware *v.* Lord Egmont the lord chancellor, Cranworth, expressed his entire concurrence in what, on many occasions of late years, had fallen from judges of great eminence on the subject of constructive notice, namely, that it was highly inexpedient for courts of equity to extend the doctrine. When a person has not actual notice he ought not to be treated as if he had notice, unless the circumstances are such as enable the court to say, not only that he might have acquired but also that he ought to have acquired it but for his gross negligence in the conduct of the business in question. The question, then, when it is sought to affect a purchaser with constructive notice, is not whether he had the means of obtaining and might by prudent caution have obtained the knowledge in question, but whether not obtaining was an act of gross or culpable negligence."

The court should, therefore, be limited to the inquiry whether the circumstances relied on furnished such implied notice to the purchaser that the transaction was not a fair one as should have put them on inquiry.

1st. Taking up the different circumstances in their natural order as they are said to have existed at the time of the negotiation, attention is first called to the allegation that the lots at the time of the purchase were listed on the books of B. H. Warner & Co. for sale, and hence they had no right to buy them at all, and
1258 their purchase must be looked upon with suspicion. It was proved that Mrs. Godfrey several years before this transaction had requested the firm to place the lots upon their books at the price of $55,000, and that this had been done, and they had so remained for several years, though the firm had never been called upon to take any steps with respect to them, and also that Wine had told Mrs. Godfrey the price was entirely too high; but Dodge, the clerk in charge of this branch of the business, testified that in making up a revised sales bulletin he wrote, about December, 1895, or January, 1896, to Mrs. Godfrey, asking whether she still desired the firm to represent her, to which no reply was ever received (though Miss Godfrey says one was written), and that the lots were not placed upon their sales bulletin published about the first of March, 1896.

Whether their former relation to the property, as explained in the proof, would have rendered it improper on their part to purchase the lots from Miss Godfrey is not the question here, for in March, 1896, Miss Godfrey had not only dismissed Warner & Co. as her agents, but also dismissed the whole retinue of agents to whom she had committed the property at different times (eight of whom have testified in this case) by selling it herself outright to Dutton. From that moment it ceased to be her property, and all her former appointments of agents were necessarily at an end. At the time Warner and Wine were bargaining for this property Miss Godfrey had twice solemnly declared by deeds that it no longer belonged to her, but was now the property of Dutton. It cannot be possible that at that time all of the former agents, now discharged by her act forever, were disenabled to buy the lots from the then existing owner merely because they had formerly been the agents of a former owner, Miss Godfrey. This circumstance was therefore of no significance whatever in the direction suggested.

2nd. It is insisted the price charged for the property was so grossly inadequate, as Warner and Wine well knew, that the small price was a suspicious circumstance that apprised them there was something wrong.

The familiar rule on this subject does not recognize mere inadequacy as a ground for annulling a sale, and requires proof that it is so gross as to shock the moral sense, and that its mere statement would compel any one to whom it is mentioned to exclaim that there must have been fraudulent conduct of some kind about the sale, since fraud is of the essence of the objections in such a case, for the courts, of course, hold that "every person is entitled to dispose of his property in such manner and on such terms as he chooses, and whether his bargains are wise and discreet or profitable or unprofitable are considerations, not for courts of justice, but for the party himself to deliberate upon." "The value of a thing is what it will produce, and it admits of no precise standard. It must be in its nature fluctuating and will depend upon ten thousand different circumstances. One man in disposing of his property may sell it for less than another would. He may sell it under a pressure of circumstances which may induce him to part with it at a particular time. If courts of equity were to unravel all these
1259 transactions, they would throw everything into confusion and set afloat the contracts of mankind." 1 Story Eq., #244–5.

Twenty witnesses were examined by the complainant and twenty-three on behalf the defendants upon the question of value. Only one of them assents to the valuation fixed by the complainant when she requested the property to be placed on the books of the numerous agents appointed by her mother and herself. That the complainant and her mother were aware that $55,000 was considered an overvaluation is indicated by the telegram of Mrs. Godfrey of 31 March, 1896, informing Mr. Wight they had sold the lots for full price to a New Yorker, and requesting him when the purchaser called to "uphold the valuation and praise the property."

It would, of course, be impossible for me to consider here all these depositions and compare in detail their relative probative force. The authorities show that such witnesses must testify from their personal knowledge of the property, and not from the representations of others—39 Maryland, 255, B. & O. R. R. *vs.* Shipley—and in averaging the estimates of a number of witnesses (which is approved by the court as a reliable method of approximating the truth in such cases) "the estimate of no witness should be included in the addition for average whose testimony, if it stood alone, could not be relied on by the court as the foundation for its decision of the question."

42 Maryland, 320, Barnum *v.* Barnum.

The various estimates of the witnesses have been carefully compared as qualified by the extent of their personal knowledge of the lots, their intelligence, and experience with respect to sales of property, especially in that neighborhood about the time of this sale. It is proved in the case that since the collapse of the so-called boom in Washington lots, several years before 1896, there has been a very marked cessation of sales and decline in prices, and it is matter of general knowledge that this has proved ruinous to many who had bought on speculation. The witnesses who give the highest values confine their estimates to cases of probable purchasers who would be able to build a handsome dwelling suitable for that neighborhood, which would limit very greatly the number of buyers.

I will mention only a few of the facts shown by the testimony which I consider very important to this inquiry. As that the shape of the lots is shown to be unfavorable for profitable use, either in separate parcels or together; that the dwelling on lots 1 and 66 is of no appreciable value; that lots 2 and 3 have an unnecessary depth and run back to an alley only ten feet wide, too narrow for a convenient entrance to a stable, and that to widen the alley at the expense of the lots would place the stable in disagreeable proximity to the dwelling.

It is most remarkable that the only offer any of the numerous real-estate agents ever received for the lots was that spoken of by Baumgras, who says he was offered in exchange several par-
1260 cels of land which the owner asserted had cost $48,000, but which were already mortgaged to their full capacity—in fact, a trade similar to that which Dutton contrived with Miss Godfrey for her lots. J. Maury Dove, who was looking for a lot in that neighborhood in September, 1897, examined this property, but made no offer, as he found its formation was not satisfactory, and he bought a corner lot on New Hampshire avenue, two squares distant, which he preferred, at a price somewhat less than $3.80 per foot. Mr. Fairfax testifies that in May, 1898, he sold a lot on New Hampshire avenue near Q street, half a square from this property, for $2.80 per foot, and that he holds for sale at less than $2.75 a corner lot at Hopkins place and P street, two squares distant, and others on P street near 18th, a square and a half distant from these lots, at $2.25 per foot.

Deeble, one of complainant's witnesses, testifies that in 1890 or 1891 he sold the lot No. 3 to Mrs. Godfrey at $3.00 per foot.

Banes, another of complainant's witnesses, states that three or four years ago he bought on speculation at $3.50 per foot a corner lot at 19th and S streets, several squares off, but he has never been able to turn it over since.

Mr. Gurley, for complainant, testifies he appraised this property at $3.50 in 1893, and that all property has decreased to some extent since then; and

Matthew Trimble, the assessor, shows that the present assessment of the whole property is $16,361, representing 75 per cent. of the entire value, which at this rate would amount to $21,814.

Many of the estimates of the complainant's witnesses must be rejected from the average for the reasons given in 42 Maryland, since standing alone neither of them could be relied upon by the court as the foundation of its decision, because of their exaggerated character, as I am satisfied the greater number of these witnesses, respectable as many of them are, are less reliable guides to a correct decision than the majority of those adduced by the defendant.

The complainant's criticism upon the testimony of the auctioneers as a class I think is untenable, for their constant connection with sales of real estate should give superior weight to their testimony. An important consideration with respect to the question is that Warner and Wine have heretofore offered to reconvey this property to the complainant on the repayment of the $25,000, with the costs of the litigation, an offer that was repeated at this hearing to the complainant and her counsel.

Rejecting such greatly exaggerated valuations from the sums given by the complainant's witnesses, the average of the remaining estimates would be about $39,000, and that of defendants' witnesses about $27,000, which would give about $33,000 as the general average of both. Purchasers do not usually buy from philanthropic motives, but from a desire to make a profit, and the difference between this general average and the price paid would not greatly exceed the profit which Wine says they hoped to make on their purchase.

1261 Although each case is to be decided upon its own facts, the findings of the courts in particular cases are instructive as showing their practical application of the rule. In many of them sales have been sustained where the disparity between the price paid and the value shown by the witnesses was much greater than that established here. One of the Maryland cases is Cohen *v.* Wagner, 6 Gill, 236, where property testified to be worth about $20,000 sold for $13,000. In Johnson *v.* Dorsey, 7 Gill, 269, the property was proved to be worth about $20,000 and sold for about $12,500. In each case the sale was sustained.

I have already gone further into detail on this point than I had intended, and I must therefore content myself with declaring that I am satisfied there was no such inadequacy in the price for which Dutton and his attorney agreed to sell the property as could be con-

sidered as the equivalent of notice to the purchaser that there was anything unfair in the sale.

It is next asserted that before the sale in April, 1896, Warner had been associated with Dutton for many years in various business transactions, and that this circumstance casts suspicion upon the contract of sale. The mere acquaintance on Warner's part with Dutton could hardly impute to him a fraudulent purpose in respect to the sale, unless he also knew Dutton was a knave in general or that he had played the knave in respect to the purchase of Miss Godfrey's property or in some other instance, for Miss Godfrey herself and her mother also knew Dutton very intimately for several years and had repeated business interviews with him, and every witness she adduces on this point also knew Dutton intimately. It must be further needful to show that Warner also knew Dutton was a dishonest man, and a mere acquaintance with him would not necessarily bring that knowledge, for otherwise Miss Godfrey and her mother would have known of his dishonesty or at least had suspicions of it when they agreed to swap properties with him, and yet she swears she never suspected him during all this time.

But Warner, in his answer to the amended bill and to the unprecedented list of special interrogatories and everywhere throughout his lengthened examination, in the most positive terms denied that he ever knew Dutton or ever saw him in his life or ever had any business relations with him of any description until the sale of the Q Street lots in April, 1896. The complainant has undertaken to make good her assertion and contradict Warner's denial by some sixteen witnesses, whose examination, with that of Warner's witnesses in reply, constitutes the greater part of this immense record.

Their testimony is designed to prove that at various times during the years 1894, 1895, and 1896 they saw Warner in New York city in the office of Stephen A. Dutton and of one Daly, an attorney, in the company of Dutton, and they undertake to state the particular business with respect to which those visits were made.

Warner produced a larger number of witnesses to prove that he was not in New York city at the times specified, and he also
1262 placed in evidence, subject to the examination of the complainant's counsel, the correspondence of the firm, containing press copies of letters signed by his autograph, written in course of business from Washington city at the various dates when it was alleged he was in New York city.

A most careful examination has satisfied me beyond doubt that the entire testimony adduced in behalf of the complainant designed to show that Warner was ever in the company of Stephen A. Dutton on either of the occasions as described is absolutely untrue, and that by far the greater part of it consists of unfounded falsehoods, uttered from bad motives and attempted to be sustained by deliberate perjury.

It is possible a few of the witnesses less wicked than the rest may only have yielded their own feebler opinions under persuasion and the force of the confident representations by others and without mali-

cious motives, and perhaps sheltering themselves behind the statement of one of the witnesses that there was another person sometimes about the office named Warren, or perhaps Warner. The witness Mr. Burnett, the last examined on this point for the complainant in September, 1898, who for years had been a visitor to Dutton's office on business, makes a further suggestion worthy of some consideration. He stated that when there some time in the late spring and fall of 1895 he met a man who was introduced by Dutton as Mr. Warner, and he recognized that person as the original of a torn lithographic print of Warner, though he could not identify him by either of the photographs of Warner filed in the cause; that, as he had admitted to defendants' counsel, he had never seen "the original of the photographs," and had recently told the same thing to complainant's counsel; that he always supposed the business Warner was transacting with Dutton was with reference to what Dutton called his Blodgett property in Washington.

But he also stated he had discovered that Dutton was in the habit of introducing persons who were at his office by the names of people of wealth and position and influence, and had once introduced to him as Mrs. Hetty Green a woman who he afterwards found out was not Mrs. Green, and that he said this might have been and probably was the case when Dutton mentioned the name of Warner on the occasion witness met the man at the office, and his hesitating conclusions, although equally wrong with those of the others, may be ascribed to this tricky device of Dutton's.

The character of the great majority of these witnesses for the complainant is distinctly bad. Among them is Langley, who testified within the walls of the Massachusetts penitentiary, where he is imprisoned for obtaining money under false pretences. Another, Blodgett, is under indictment in Philadelphia for the same offence. Another, Allen A. Dutton, is under indictment for fraudulent pretences. Another, Robbins, who was proved to have been imprisoned for some crime after testifying for the complainant, in March,
1263 1898, came to Mr. Delafield, the defendants' attorney, in New York, in June following, and told him he had been faithful to complainant's side while they employed him but was now open to engagement on the other side, and if he would employ him he could modify his testimony so as to benefit him and could give him valuable information.

The testimony coming from many of these witnesses consists so largely of contradictions of each other and of themselves and of admitted untruths that the maxim relied on in the case of the Santissima Trinidad to suit their utterances should be modified to read, "*falsus in omnibus, falsus in uno.*"

I am necessarily limited to a brief notice of some portions of their testimony.

The chief among them is a youth named John Staudinger, who was an office boy for Henry Daly, a friend of Stephen A. Dutton. He swore without hesitation that he had seen Warner at Daly's, in company with Dutton, a dozen times in the fall of 1895. With great difficulty he was compelled to identify the particular days

when these visits took place, and then positively named the 30th of August and Wednesday, the 18th of September. He fixed the latter day because he was going that night to a ball at Webster's hall and was in a hurry to get away, though he could not locate Webster hall and could not tell whether it was two squares or forty from Broadway. It is positively proved by the proprietors of Webster hall that during all the week including that day there was no ball held there, and that it was occupied during that entire time by meetings of a Hebrew society. Besides, the record evidence of the firm books show that Warner was in Washington, writing business letters, on the 18th of September.

With respect to the 30th of August, it was proved by several witnesses, among them the Hon. Holmes Conrad, lately the Solicitor General of the United States, that for the month including that day Warner was at Capon Springs, in West Virginia; that a tournament was held there during that day and the day before, and that Warner made an address to the knights on the 30th and gave an entertainment to the company on that night. The testimony given by Staudinger on cross-examination and that by other witnesses stamps him as a youthful prodigy of mendacity.

Anthony Comstock testifies that after Staudinger's return from Washington he admitted to him in Beecher's office that although he had testified he had seen Warner with Dutton, yet in fact he had never seen him at all, and explained at length his method of testimony, and said he had followed the rule to stick to his story and when asked about anything he didn't want to reveal to say he "didn't remember." He then declared to Comstock his willingness to go on the stand in a supposititious divorce case and swear he had witnessed incriminating conduct between two persons, although he had never seen them at all; that he handed to Staudinger the paper, Exhibit A (identified by witnesses as Staudinger's handwriting and signed by him), containing a sample false statement, and that Staudinger assented to its correctness, and also declared
1264 himself prepared to verify a similar statement in a so-called Rockwell case, containing false statements dictated by him and written out by Comstock, of things he professed to have seen, but which had never occurred—marked Exhibit B—and signed it in Comstock's presence. Rockwell, Hanse, Hennessy, and Dittman testify to the same effect, entirely supporting Comstock, Hennessy swearing he saw Staudinger write and sign the statement, Exhibit A. Staudinger, in reply, denied having been in Beecher's office for two years. With reference — the paper, Exhibit A, he swears it is "my own;" "it is my writing," but "is a forgery." "I never wrote it," and he also denied all connection with the paper, Exhibit B, signed with his name. He was in Daily's employment when he went to Washington to testify, and to excuse his absence to Daily he wrote a postal card to which he signed his father's name, stating his son John was ill, and therefore unable to be at the office that day. This brief abstract of his testimony may give an idea of his apparently innate aversion to the truth.

Mrs. Benson, a clerk in Dutton's office for portions of the last two

weeks of May and first week in June, 1895, was induced, with great reluctance, by the persuasion of Standinger and others, to go to Washington, and there testified she had seen Warner at Dutton's office several times during the first week of her employment. She repeatedly stated there was a man about the office named Warren, whose general appearance, as described by her, resembles that of Warner, the defendant; and in her cross-examination, in which she really withdraws her former statement, she frequently says she will not swear she was not mistaken by confounding the two men. She also declares there was yet another man who frequented the office, interested in Colorado mines, who was also named Warner; and, in view of her evident confusion after her re-examination by the complainant's counsel, of one hundred and forty-four typewritten pages, with respect to the photographs shown her by complainant's counsel of the defendant Warner, with his name clearly written beneath, before she agreed to go to Washington to testify, it is not improbable that the original statement may have been the result of misunderstanding and perplexity, rather than of wilful purpose to misrepresent. I gladly make this statement, as I would prefer to do about every witness here, if I could do so conscientiously.

The nature of the business that engaged Warner in these interviews with Stephen A. Dutton, as described by these witnesses, is as improbable as the stories themselves. A large part of them is said to have related to the incorporation and affairs of what they called the Chapin-Randolph Company, part of whose business which was under consideration at these meetings, it is said, was the manufacture of pocket-books to contain the photograph of the owner with a view to his recognition. If such childish plans ever existed, nothing can be more improbable than that a man of Mr. Warner's extensive business affairs would have been silly enough
1265 to go on repeatedly to New York to attend meetings of the worthies who were said to have composed the managers, among whom were Langley, who admits he was known in police quarters as the "King of Funks;" Stephen A. Dutton, Nettleton, and similar individuals, who happened at that time not to be undergoing imprisonment.

The Blodgett claim was so generally notorious that it seemed a safe thing to swear, as some of the witnesses did, that Warner's business with Dutton on some occasions was with reference to what Dutton called his Blodgett property. But unfortunately for this surmise, it is conclusively proved that Warner never had any connection with that claim and had always denounced it as fraudulent. Mr. Blodgett, aged seventy-six, who was examined as to his recognition of Warner, distinctly repudiated the idea that Warner ever had anything to do with the claim, and that feature of the falsehood must be absolutely abandoned.

The next contention is that the haste with which Dutton required the property to be sold was a circumstance of suspicion.

Dutton placed the property in Mrs. Mussey's hands on the 31st of March, 1896, with the request to raise money upon it as soon as possible. Ten days had elapsed before Mrs. Mussey offered to sell

the lots to Warner & Co. for $25,000. She had previously attempted to obtain a loan from the firm, which they said was impossible. She told them of Dutton's anxiety to sell. This circumstance is nothing unusual in the experience of real-estate dealers, nor does it import fraud. In the words of Judge Story, before quoted, the owner may sell his property "under a pressure of circumstances which may induce him to part with it at a particular time." The defendants made no effort to hasten the sale. On the contrary, when Mrs. Mussey said they wanted it closed sooner, Warner said it could be arranged in a few days. They required the papers should be taken to Mr. Edmonston, of the title company, for examination, and Wine told him, though the owner was in a hurry, they were not; they desired a thorough investigation of the title, and Edmonston took all the time required for the purpose. After the deeds were ready, the defendants claimed that Dutton should pay the taxes in arrears, and this threatened to break up the bargain, but Wine insisted upon this point. This is not consistent with a consciousness they were obtaining a great bargain, or they would scarcely have run the risk of losing it for so comparatively insignificant a difference.

These constitute all the objections existing at the time of the sale which are relied upon as giving implied notice to the defendants that they were buying under circumstances the courts would consider suspicious. A further circumstance commented on is that they afterwards directed the title to be conveyed to Richardson, the nephew of Wine, who had been a clerk in their office and was unmarried.

It is so clearly established in the proof that such a mode of taking the title is usual in Washington, with a contemporaneous de-
1266 feasance to the real owners, that little need be said on the point. There can be no pretence that this was done under circumstances of secrecy. From the first Edmonston (who is one of the trustees in a deed executed by Mrs. Godfrey) was informed the conveyance was to be made to Richardson as a matter of convenience. The reason given for this practice where the property is purchased to sell again by members of a firm who are married is that it saves the trouble and expense of their wives joining in deeds, whether by way of mortgages to raise the purchase-money or to convey the title to a purchaser. Richardson, as is also the custom, a day or two afterwards executed a conveyance by way of acknowledgment that the beneficial title was in Warner and Wine individually.

It thus appears that none of the circumstances surrounding the purchase when it was made, suggested by the complainant, constituted any reason why Warner and Wine should have applied to Miss Godfrey to know whether she had any objection to their buying the lots. It would be a new idea that a purchaser must endeavor to raise suspicions against his vendor and require a certificate of his good character from the previous owner. The Godfreys scarcely considered such a precaution necessary when they were taking title to either of the lots.

Mr. Wight has shown in his testimony his opinion of such a course, for when asked why, after he had been told by Mr. Wine on the tenth of April that he had been offered the property at $25,000, he did not communicate that fact to Mrs. Godfrey, he replied, "Mrs. Godfrey had informed me she had sold it." In his interview with Wine on the tenth of April he used almost the identical words—that Mrs. Godfrey had owned the property, but had sold it. His business knowledge told him that under ordinary circumstances that closed the incident, and there is nothing shown in this case, as we have seen, that was exceptional, and yet Mr. Wight was upon closer terms with the Godfreys than any one whose name appears in the case, except Stephen A. Dutton, and if any duty was charged upon any one connected with it he was that person; and it cannot be supposed he would have neglected such a duty towards his correspondent if the circumstances as they then appeared before Dutton's villainies had been discovered had indicated the propriety of communicating to her information he thought she ought to receive, and Mr. Wight knew everything that the defendants then knew as to the various alleged suspicious circumstances. There is no obligation upon an intending purchaser to communicate his plans to others. Business men try to keep their own counsel on such subjects, and they are justified in such an exercise of common sense by the legal maxim "*aliud est tacere, aliud celare*"—it is one thing to be silent, another to conceal. The concealment referred to is where one party to a contract, with a view to his own advantage, withholds from the other information of material matters known only to the party neglecting to communicate them, the knowledge of which would be beneficial to the other party. The postulates
1267 of such a duty on the part of the defendants are entirely wanting here. The difference between foreknowledge and hindknowledge is what I intend to suggest.

But if the defendants had informed the complainant that the matters alleged had a suspicious appearance and had asked an explanation what would have been the result? Can it be doubted she would have treated such suggestion as she did the hints of Czaki, who endeavored to inform her that Dutton was not to be relied on? She listened with incredulity to the suggestion, and when Dutton came in on one of his visits she told Czaki he had better repeat his charges before Dutton; whereupon Czaki slided out of the room and Dutton remained and soon satisfied her Czaki was a slanderer; so when she received on April 17th the positive information from B. H. Warner & Co. that Dutton had sold the lots, instead of writing to Mr. Wight or any one else in Washington, she preferred to obtain information from Dutton and was entirely satisfied by his assurance that it was all a "mere clerical error," and that he had obtained a large building loan and was to build an apartment house upon the lots and proceeded to consult her as to the color of the brick to be used in the building, and she forthwith gave up the keys to be sent to the firm, although as mortgagees they could have no right to the possession of the property or to the keys. Her confidence in Dutton seemed almost unlimited from the time she and

her mother stopped to look at the wharf property and first met Dutton. She entrusted the examination of the title to the New York property and the preparation of the deeds to attorneys previously unknown to her upon the recommendation of Dutton, which insured they would be either incompetent or untrustworthy, or both, and yet if she had employed an honest lawyer all this trouble would have been prevented. Seeing him almost every day during the two weeks preceding the signing of the agreement of sale with him, she had become assured from papers in his possession, apparently signed by people of importance, that Dutton was all he professed to be. Strange and exasperating as all this seems now, in the light of the subsequent exposures, yet the case is not without precedent. In that same city within recent years more remarkable instances of delusion and imposture have occurred in some of which, prominent people, the benefactors of the country among them, have been swindled and reduced to penury by the misrepresentations of specious knaves, who were able to deceive good men because, themselves incapable of falsehood, they found it difficult to suspect it in others who had contrived to win their confidence.

Thinking thus favorably of Dutton, and being confident she had made a very beneficial bargain which she naturally did not wish disturbed, the reply to such a suggestion of the defendants would doubtless have been in substance that she knew no reason why Mr. Dutton should not sell his own property for such price as he should think fit, and that he was a man of large wealth and excellent position and clientage. So the defendants would have received no benefit from their interference, while it probably would have
1268 deprived their friend, Mrs. Mussey, of her commissions, and burdened themselves with the cost of their incomplete bargain.

Some other considerations have been dwelt upon in the argument growing out of acts of the defendants subsequent to the deeds, and which, of course, they could not have communicated to the complainant before the purchase, as they had as yet no existence. But they may be applied, nevertheless, where not too remote, as illustrating, by relation back, the purposes and motives of the defendants. Some of them may individually possess little weight, but they may, nevertheless, be considered when investigating charges of fraud, since the smallest facts, if really germane to the transaction, should be taken into the account, for when assembled they may possess sufficient weight to convince the conscience of the court.

The first grows out of the answer of Richardson to the original bill, in which it is said Richardson swore he was the purchaser of the land, when he knew his name was placed in the deed only as a convenience, and further that he swore he paid the purchase-money, when he knew it was furnished by Warner and Wine.

The rules of pleading admit of pleas that often seem inconsistent when tested by the logic of ordinary talk. That a defendant should be allowed to plead general performance to a suit on a bond and *non est factum*, or not guilty and *son assault demesne*, or *non est factum* and payment, seems singular enough; but they are artificial forms

through which different defenses may be presented without inconsistency in its legal sense, however contradictory they may appear in common parlance. And pleadings are not always to be measured by the rules of the pedagogue. In the case before us the original bill raised a distinct issue, which was that no money or other consideration had been parted with by Richardson and received by Dutton.

Mr. E. H. Thomas, a well-known solicitor, was employed to file an answer for Richardson. His deposition shows he was perfectly aware Richardson had not paid for the land with his own money, and that Warner and Wine were the beneficial owners of the land; that on examination he became satisfied he could either respond directly to the charge and aver Richardson was an innocent purchaser for value without notice, or that Richardson could set forth the facts in full and disclaim his title and state he held for Warner and Wine; that on his own responsibility and without the slightest suggestion to that effect by Warner, Wine, or Richardson, he decided it best to adopt the former course, which he considered was justified by the chancery practice and by the 34th equity rule, which declares that "a *bona fide* purchaser for a valuable consideration without notice may set up the defence by answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea;" that on explaining this to Wine he found he preferred the form which presented Richardson as an innocent holder, although
1269 he said he had no objection to the facts being known; that he had nothing to conceal, but as he had never been sued, except once for a trivial affair, he should prefer the form which would keep their names off the record, though he left the matter entirely to his counsel to do as he thought best, and that the form of the answer was his work entirely upon his own responsibility as counsel, and neither of the defendants influenced his legal opinion in the matter, as he knew the entire facts would come out in the proofs under that form of defence as fully as if they were set out in the answer in advance.

It is clear the point of the charge in the bill had nothing to do with the personality of the purchaser, but related only to the question whether any valuable consideration passed from anybody to Dutton; and, although it is now evident the better form would have been to anticipate the proofs and state the entire facts as fully as evidence should ever be incorporated in pleadings, there is nothing in the action of the attorney (for which the principals must stand responsible) that can be regarded as evidence of a fraud in the original purchase, and it is only as affecting that question that the objection is made.

That there was any motive of concealing the real transaction is inconsistent with the fact that shortly after Mrs. Mussey had told Edson she would offer him the lots for $25,000 Wine told Edson he and Warner had bought them at that price; that Wine had told Wight the same thing on the evening of the tenth of April, and

Warner had talked with Wight about it shortly afterwards; that Warner stated the facts to the complainant's representatives in New York, which the complainant says was the first information she had on the subject.

The assertion that there existed any agreement that Dutton should only mortgage the property when the deed was given to Richardson has no support except in Dutton's alleged statement to that effect and his paying one instalment of interest on one of the mortgages after he had conveyed the property to Richardson. It is evident from the proof that this was done by Dutton from some sinister motive, perhaps only with the hope the payment might deceive some one into the belief he still owned the property, that he might raise money on it. His declarations and his acts after he had parted with his title are equally inadmissible to defeat the title of his vendee. Besides, such a pretence could only be maintained by imputing a fraudulent conspiracy to Edmonston, who prepared the deeds, and to Mrs. Mussey, and all the defendants—all of them—as well as Dutton, saw they were absolute conveyances on their face.

I have here examined all the objections relied on in behalf of the complainant that are of importance to the decision of this case, and after the fullest consideration of the pleadings, with the testimony of at least one hundred and forty witnesses and of the able arguments of counsel, I am clearly of the opinion that nothing has been shown that would justify the court in disturbing the sale. Not only are the charges against the defendants Warner and Wine not proved, but there is nothing in the testimony to create a just suspicion of improper conduct on the part of either in this transaction or to impugn their character for integrity.

1270 & 1271

I shall sign a decree dismissing the bill with costs.

A. B. HAGNER,
Associate Justice.

January 19th, 1899.

Decree.

Filed Jan. 24, 1899.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } Equity. No. 17631.

This cause coming on to be heard upon the pleadings and evidence, and having been argued by the counsel for the parties, respectively, and submitted to the court at the December, 1898, term thereof, and having been duly considered it is thereupon, by the court, this 24th day of January, A. D. 1899, adjudged, ordered, and decreed that, as against the defendants Louis W. Richardson, Brainard H. Warner, and Louis D. Wine, the bill and amended bills of the complainant be, and the same hereby are, dismissed with costs, and that the said defendants do recover their said costs against the

complainant and against the American Surety Company of New York, her surety in the undertaking for costs filed herein on the 16th day of July, 1897, pursuant to the terms of said undertaking, and that said defendants have execution therefor as at law.

A. B. HAGNER,
Asso. Justice.

From the above decree the complainant, in open court, notes an appeal to the Court of Appeals, and, upon motion, the court fixes the amount of the appeal bond, to operate as a supersedeas, in the sum of three thousand dollars ($3,000).

24 Jan., '99.

A. B. HAGNER,
Asso. Justice.

Memorandum.

February 7, 1899.—Appeal bond filed.

* * * * * * *

1272 In the Court of Appeals of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } No. 892.

Comes now the appellant, Lily Alys Godfrey, and states that one of the errors for which she prosecutes this appeal is, in substance, that the court erred in not finding that the deeds of lots 1, 2, 3, and 66, in square 134, Washington, D. C., executed to Stephen A. Dutton by Lily Alys Godfrey and Mary Alice Godfrey April 6, 1896, were void and null for fraud on the part of said Dutton, and that no title to said lots ever vested in him, and that the deed of said lots thereafter executed by said Dutton to Louis W. Richardson on April 13, 1896, was null and void, both because the said Dutton, not having acquired any title to said lots, could not convey any title thereto, and also because the appellees Warner and Wine, for whom the said Richardson acted, had knowledge of such facts and circumstances as would excite the suspicions of a man of ordinary and reasonable prudence and which were sufficient to put them on inquiry regarding the conveyance aforesaid to said Dutton and to charge them in equity with notice of the fraud practiced on the appellant by said Dutton in obtaining said deeds.

2. The court erred in not finding that the said defendants, Warner and Wine, were so chargeable with notice of the fraud of Dutton in procuring the property in controversy; that the conveyance by said Dutton to said Richardson and by said Richardson to said Warner and Wine should be set aside and held for naught.

3. The court erred in not finding that the said defendants, Warner and Wine, did not exercise due and proper diligence in their dealings with the said Dutton in their acquisition of the said premises through said Richardson from the said Dutton, and by reason of

such failure to use due diligence they were in equity bound to convey to complainant the said premises.

4. The court erred in not decreeing that the premises in question were procured to be conveyed by complainant to Dutton by the fraud of said Dutton.

That the conveyance thereof by the said Dutton to
1273–1291 defendant Richardson was not for any consideration paid by said Richardson but by said Warner and Wine.

That the said Richardson was used by said Warner and Wine to conceal the fact that they were the actual purchasers.

That the said Richardson had no interest in said premises at any time and never paid any consideration therefor.

That said Warner and Wine resorted to the device of having said premises conveyed to said Richardson to conceal the fact that they were the purchasers, and that they had such facts within their knowledge as put them upon inquiry and charged them with notice of the fraud of said Dutton; that they failed to make such inquiry, by reason whereof the conveyance to them should be decreed to be null and void and a conveyance decreed by them to complainant.

5. That the court erred in dismissing complainant's bills of complaint herein.

* * * * * * *

1292 LILY ALYS GODFREY, Appellant,
vs.
STEPHEN A. DUTTON, CORA M. DUTTON, His Wife; FREDERICK M. CZAKI, MARY ALICE GODFREY, LOUIS WINE RICHARDSON, BRAINARD H. WARNER, and LOUIS D. WINE. } No. 892.

Opinion.

Mr. Justice SHEPARD delivered the opinion of the court:

This suit was begun with the original bill filed September 1, 1896, by Lily Alys Godfrey, and the defendants therein named were Stephen A. Dutton and wife, Louis W. Richardson and Mary Alice Godfrey.

Complainant alleged that on March 26, 1896, the legal title to lots 1, 2, 3 and 66 in square 134, and lot 40 in square 92 in the city of Washington, was vested in her mother, Mary Alice Godfrey, in trust for complainant. Said first-named lots were incumbered by three different deeds of trust to secure loans amounting to about $17,500. On said date complainant and her said mother conveyed the said property to Stephen A. Dutton subject to the incumbrances aforesaid. The consideration for said conveyance was a contract for the conveyance by Dutton to complainant of certain leasehold and other property in the city of New York, where all the parties then resided. On April 13, 1896, said Dutton and wife conveyed the lots aforesaid to defendant, Louis W. Richardson, subject to said incumbrances.

That the conveyance to Dutton was obtained by fraudulent representations and without actual consideration; and that the conveyance by Dutton to Richardson was fraudulent, without consideration

and void. The prayer was for the cancel-ation of said deeds and the recovery of the property subject to said incumbrances.

Dutton and wife made no answer, and as to them, final decree was duly entered in accordance with the prayer of the bill upon an order *pro confesso*. This ended the litigation as regards lot 40 in square 92, situated on Connecticut avenue. Richardson answered December 1, 1896, admitting the purchase of the remaining lots, situated on New Hampshire avenue at its intersection with Q and Eighteenth streets, and alleging the payment therefor in good faith of $25,000, part of which consisted of the assumption of the incumbrances thereon. He further answered that he made the purchase through B. H. Warner & Company, real-estate brokers, and gave the history of the negotiations, resulting in the contract of purchase, examination of title, payment of purchase-money, and receipt of conveyance. He expressly alleged that neither he nor said B. H. Warner & Co. had any knowledge, direct or indirect, of the equities of the complainant; that possession was immediately given to him, through his said agents, B. H. Warner & Co., and the same has continued since. His answer also sets out notice to complainant of his purchase and assent by her thereto without objection, through the following correspondence:

"APRIL 17, 1896.

"Mrs. Mary A. Godfrey, 287 West 70th St., New York city, N. Y.

"DEAR MADAM: A client of ours has recently purchased premises known as 1801 Q St., N. W., this city, from Mr. Dutton. We called on Gen. Robertson, who has had charge of the property, for the keys this morning, and he informed us that he had, at your request, returned the same to you. We will be very much obliged to you if you would forward the same to us by mail or by express at our expense.

"Very truly yours, B. H. WARNER & CO."

1293 And thereupon, the 18th day of April, 1896, in response to the above letter, the said complainant's mother, for and on behalf of complainant, sent and delivered said keys to said B. H. Warner & Co., agents of this defendant, and accompanied the same by a letter, of which the following is a copy, to wit:

"B. H. Warner & Co.

"DEAR SIRS: Please find enclosed key to the house 1801 Q St. N. W.

"Yours very truly, M. A. GODFREY,
"287 *W. 70th St., Corner West End Ave., New York.*

"April 18th, '96."

The contract for the purchase of said lots, under which the conveyance was made three days later, is made an exhibit to this answer. It is a printed form of the firm of B. H. Warner & Co., showing the names of the four members thereof, namely, Brainard H. Warner, Louis D. Wine, Geo. W. F. Swartzell and Clarence B. Rheem. The first paragraph reads as follows:

"Articles of agreement, made and entered into this 10th day of April, A. D. one thousand eight hundred and ninety-six, by and between —— ——, party of the first part, and Louis W. Richardson, party of the second part, in manner and form following: The said party of the first part in consideration of the sum of five hundred (500) dollars to their agents, B. H. Warner & Co., duly paid as a deposit, the receipt whereof is hereby acknowledged, hereby agree to sell unto the party of the second part the following-described real estate in the city of Washington and District of Columbia: Lots 66, 1, 2, & 3, square 134, Wash., D. C."

Then follows a recital of the consideration, terms of payment as heretofore stated, and a final provision that the terms of sale are to be complied with in five days; title to be good and marketable or deposit returned.

This was signed by S. A. Dutton and L. W. Richardson. It appears from the testimony that when first drawn and sent to the attorney of Dutton the limit for completion was fifteen days; she changed it to five before execution and delivery.

On July 17, 1897, complainant filed an amended and supplemental bill, under leave obtained February 16, making Brainard H. Warner and Louis D. Wine parties defendant. The charges of the original bill are amplified in respect of the fraudulent acts of Dutton, who it is alleged was indicted in the city of New York on August 28, 1896, for felony, the offence being the fraudulent procurement of complainant's signature to the agreement aforesaid made March 26, 1896, and has since been convicted and confined in the State penitentiary. The special charges made against the defendants Warner and Wine are that, the said lots had, some years before, been in their hands as brokers for sale at a fixed price of $55,000. That they were worth said sum. That the price for which said lots were purchased from Dutton ($25,000) was grossly inadequate. That when the proposition to sell them for said sum was made by the attorney of Dutton, to B. H. Warner & Co., it was the duty of Warner and Wine to inquire of complainant, whose address in New York was known, whether there existed any reason why a sale for such price should not be made, and whether Dutton had honestly acquired the conveyance thereof from complainant. That instead of making inquiry or giving notice to complainant, they set about the acquisition of the said lots for their own benefit, and, for the purpose of concealing their connection with the transaction, caused the title to be conveyed to said Louis W. Richardson. That said Richardson was the nephew of said Wine, and a young man, without means or business experience, employed by B. H. Warner & Co. as a clerk. That he was used as a tool by said Warner and Wine, and if any consideration at all was paid it was paid by them and not him, and that they claim the property and are collecting the rents of the house thereon.

Warner and Wine answered the charges of the bill under oath, as well as many interrogatories propounded therewith to obtain discovery. They denied having been agents for the sale of the property, and said that in 1893, Mary A. Godfrey, the trustee, had in-

formed B. H. Warner & Co., and other real-estate brokers, that she would sell the lots for $55,000, and pay a commission if a purchaser should be found. No offer had ever been made to them, and the property had, a long time before April, 1896, been stricken from their sales bulletins. That complainant knew that Dutton had been and was trying to borrow money upon the said lots, and was advised of its sale by him immediately thereafter, and made no objection thereto, but co-operated with him. They aver that they made the purchase for a fair consideration and in perfect good faith.

The history of the transaction is thus stated in the answer:

"On or about the 10th day of April, 1896, Mrs. Ellen Spencer Mussey, a member of the bar of this District, stated to the defendant Warner, at his office No. 916 F street, N. W., that she had for sale the said lots in square 134, and was referred by the said Warner to the defendant Wine, said Warner being then engaged; whereupon the said Mussey stated to the defendant Wine that she was acting as the attorney for one Stephen A. Dutton, of New York, who had several judgments against him in that city which for business reasons it was important to him to satisfy immediately or be subjected to great loss, and that for this reason he desired to make an immediate sale of the said lots; that he would sell the same at $25,000 less a commission of three per centum; and that said Dutton had come to her with a recommendation given by a business man of high standing in New York, who had been a classmate of her deceased husband. Thereupon, after some conference between these defendants, they agreed to purchase the said property at the price named, but, as they bought it to sell again on their joint account and for their joint benefit, and as they were married men, for purposes of convenience they agreed that the title should be conveyed to the defendant, Louis W. Richardson, who could convey direct to any purchaser without the trouble and possible inconvenience of requiring any conveyance thereof to be executed and acknowledged by the wives of these defendants; and, as the result of the said negotiation and agreement, the contract to sell was entered
1294 into, a copy of which is filed as a part of the answer of the defendant Richardson to the original bill herein, which contract is hereby referred to and prayed to be read as part of this answer. The Columbia Title Insurance Company was thereupon employed to examine the title to said lots in the usual and regular course of business, and a check made by the firm of B. H. Warner & Co. was drawn to its order and delivered to it for the sum of seven thousand and eighty-six dollars and thirty-three cents ($7,086.33) on the 13th day of April, 1896, at which time the said title company completed its report, showing the title good in said Richardson. There were at that date taxes and interest against the property amounting to $413.67, and other incumbrances aggregating $17,500, which sums, together with the amount of said check, which last-named amount was applied by said title company to payment for said property as per the terms of the said contract of purchase from the defendant Dutton.

"Further answering the said paragraph, these defendants deny

that they caused the conveyance of the said property to be made to the defendant Richardson for any purpose of concealment, or for any other purpose than the wholly innocent one of taking the title in such manner as would enable them more readily to handle and dispose of said property than if the title were vested in themselves, and they show to the court that it is, and for many years has been, the custom of real-estate dealers in the District of Columbia to take title in this manner under similar circumstances, which custom has been and is well known throughout said District."

The court below, being of the opinion that Warner and Wine were purchasers for value, without notice of the fraud of Dutton, entered a decree, on January 24, 1899, dismissing the original and supplemental bills as to Richardson, Warner and Wine.

1. The fraud practiced by Dutton upon the unsuspecting complainant and her mother, whereby they were induced to execute conveyances to him of the several parcels of property in Washington, is unquestioned, and has been settled by the decree against him; which decree also removes the Connecticut Avenue property from the controversy.

The record contains an enormous volume of testimony, much of which is irrelevant, directed to the issues between complainant and the defendants Warner and Wine, respecting their knowledge of the fraudulent character of the title that had been acquired by Dutton.

An attempt was first made by the complainant to prove that, prior to this transaction, Warner had become acquainted with Dutton, had been seen in his office in New York and in his company on several occasions, and was aware of his pecuniary condition and real character; and hence ought to have suspected—to such an extent as to be put upon inquiry—that Dutton had come into the apparent ownership of this valuable property by means of fraud and false pretences.

Counsel, who appeared for the appellant on this appeal, has admitted the failure of this testimony; and properly so, we think, because it comes from questionable sources, and has, besides, been completely met by evidence on behalf of the defendants.

It is an unquestioned fact, also, that Dutton actually received from Warner and Wine nearly $7,000 in cash, the same being the excess of the consideration agreed upon over and above the sum total of the incumbrances assumed in the conveyance made to Richardson.

2. The final contention is, that, treating Dutton as an entire stranger to his vendees, the facts and circumstances of and surrounding the transaction were not only sufficient to cause them to suspect, but also to indicate that they did in fact suspect that Dutton had acquired his apparent title through fraud practiced upon the complainant; and that, put upon inquiry thereby, they would have discovered the same had they exercised ordinary care.

This contention is founded on four main facts claimed to have been proved by the remaining testimony, namely, the gross inadequacy of the consideration; the former agency of the firm of B. H. Warner & Co., for sale on behalf of the complainant; the haste with which the negotiation was conducted and the sale completed; the execution of

title to Richardson for the benefit of Warner and Wine, and the concealment of their interest.

In view of our conclusion in respect of the final disposition of this case we think it unnecessary to consume time with a lengthy review of the mass of evidence bearing on the foregoing points, and of all the inferences deducible therefrom.

It is sufficient, therefore, to say: (1) That there is great conflict of opinion between the many well-informed witnesses who have testified to the value of the premises in April, 1896. These estimates range between $25,000 to $30,000 upon one side, and from $45,000 to $55,000 upon the other.

Without undertaking the difficult task of determining the real market value of the property at that time, we are not satisfied that the price paid was so low, or so out of proportion to that value, as to suggest a suspicion of the fairness of the seller's title.

(2.) That the testimony does not show that at the time of the purchase from Dutton, B. H. Warner & Co., of which firm Warner and Wine were leading partners, were the agents of complainant for the sale of the property. It had been upon their books at one time, as well as upon those of many others. They had no negotiations looking to its sale, and had, a considerable time before, dropped it from their published lists. The reliance of complainant for the sale of her property was clearly not upon them at the time, but another.

(3.) That the haste with which the negotiation was conducted was not so unreasonable as, of itself, to naturally excite suspicion, and prompt investigation. Dutton was represented by a reputable attorney to whom he had come with a letter of introduction. He represented that he had judgments against him which made it necessary for him to raise money immediately. An unsuccessful attempt was made to secure a loan upon second mortgage; and then it was offered for sale.

(4.) That the contract for the purchase was made in the name
1295 of Richardson by Warner and Wine, who were in fact the real purchasers, though professedly acting as Dutton's agents, though the use of the name of B. H. Warner & Co., does not warrant the inference, in connection with the other circumstances of the transaction, that they either colluded with Dutton, or must have known the purpose of his sale. Their real ownership was known to several persons at least, at the time, though intended to be kept from the public generally, as appears from the transaction itself, and from the letter of B. H. Warner & Co., asking for the key and stating that the lots had been sold to their client.

Richardson was a young man without means, a nephew of Wine, and an employee of B. H. Warner & Co. Men of their business experience must have been aware that this mere agency for them could not have been kept concealed from inquiry, even if concealment had been studiously attempted; and also that studied concealment and express denial would be regarded as evidence of their guilty knowledge or collusion. The inference is reasonable, therefore, that they used the name of Richardson for the purposes stated in their answer.

We do not rest any part of this conclusion upon the fact, as proved, that such lodgments of title are frequently made by purchasers of land for convenience, and not regarded as improper.

If such a practice be common for convenience in avoiding the procurement of the signatures of the real owners' wives, or to evade personal liability for the assumption of incumbrances, or to conceal from the general public the fact that agents dealing in lands for others are also engaged in purchasing on their own account, or for other reasons that might be suggested, we are not to be understood as giving it our indorsement.

Any custom that looks to the concealment of the truth of a transaction, or tends to mislead the public generally, although it may not be accompanied by an intention to defraud any particular person, is more honored in the breach than the observance.

3. If it were conceded, however, that the circumstances attending the transaction were of a character that might, to a cautious mind, have suggested inquiry into the nature of Dutton's apparent title, our conclusion, from the testimony on behalf of complainant, is that such an inquiry would not have resulted in arresting the sale.

The testimony shows that complainant and her mother had implicit confidence in Dutton and were under his influence.

They believed that he was a very wealthy man. He lived in a house which he made them believe had cost $70,000. They had not the slightest suspicion of his true character.

They believed that the property he contracted to convey to them in exchange for the Washington property was very valuable. They took the statement of his attorney regarding the title, when the slightest inquiry or investigation would have clearly shown the fraud practiced upon them. So completely were they satisfied with the exchange contracted for, that when Dutton went to Washington, as they supposed, to examine the property, on March 31, 1896, they sent the following telegram to Mr. John B. Wight, who had been acting as agent for the sale of the property: "Sold New Hampshire Avenue corner to New York party last week for full price; they will look at property today; recommend you as best real-estate agent. If they call, please uphold my valuation and praise property in every respect. I want them to be satisfied with purchase."

Dutton was in Mr. Wight's office with the deed in his pocket when this dispatch came.

Complainant did not, of course, know or suspect that Dutton needed no commendation of the property, and that his purpose was to sell it for what he could get. She did, however, expect him to obtain a loan upon it, as he had led her to believe that he would erect a handsome hotel or apartment house upon it.

But the title conveyed was absolute. There was certainly no express collateral agreement that he should build on the property, or that he should not sell it.

There was no occasion for such a condition under the circumstances existing at the time. They had sold for what they believed to be a "full price," to a man supposed to be worth millions, and in whom they had perfect faith. After his return from Washington

they executed new deeds to cure some supposed defect in the former.

When informed by the letter of B. H. Warner & Co., that the property had been sold to a client who wanted the key, they sent it without a word of inquiry. The terms of this letter were plain enough, but complainant testified that she thought there was some mistake because Dutton had told her that he had obtained a loan upon the property and intended to erect a large apartment house. But instead of inquiring of Warner & Co. as to this, she inquired of Dutton. He told her it was "a mere clerical error;" that he had just obtained a large building loan and had plans for the house. He exhibited his plans, consulted complainant and her mother in regard thereto, and, in complainant's own language, "explained everything so satisfactorily that no doubt or suspicion in any way entered our minds."

When complainant first suspected Dutton does not appear; it is apparent, however, that it was not before some time in July, 1896. In June, or about July 1, she was induced by him to sign an additional agreement concerning the wharf leasehold that he had given her for her property, whereby she was made to assume certain judgments against him. She said she did not understand the matter fully, but "had confidence in him and did what he told me." Prior to this, about April 21, one Czaki, who had been concerned in affairs with Dutton, undertook to tell her of Dutton's real character. Dutton came in while Czaki was talking and the latter "slid out of the door." Dutton explained Czaki's conduct by telling her that the latter had turned against him under the influence of the "ice trust" that was engaged in his persecution. She was completely reassured, and gave Dutton a paper left with her by Czaki. This seems to have been a subpœna to her in some supplementary proceedings by judgment creditors of Dutton. Complainant and her mother 1296 had interviews with Dutton at the Astor House café as late as July, going there, instead of his office, because, as they say, it was pleasanter, and also for fear that papers might be served upon them at the latter place.

Now, in the light of all this evidence, we cannot believe that a direct inquiry by Warner and Wine, before their purchase, would have led to a denial of Dutton's apparent title.

Notwithstanding the Washington property is the fruit of the fraud practiced by Dutton, it must not be forgotten that this fraud did not consist in obtaining an absolute title to that property, when none was intended to be conveyed; but in procuring the title upon false representations as to the title of that which he exchanged for it. Had that property proved to be as represented, complainant would have had no cause to complain of any disposition made by Dutton of the Washington property. The real fraud perpetrated, then, in regard to the consideration given to her, was not discovered, as we have seen, until July; consequently, the presumption is not at all reasonable that the inquiry by Warner and Wine of the nature of Dutton's title would have developed that fraud.

It is true that when one acquiring a title, has acted without in-

quiry, under circumstances so strongly suggestive as to make inquiry a positive duty, it would be a dangerous innovation to rest the question of implied or constructive notice upon the possible result of inquiry had it been made; and we are not to be understood as enouncing any such doctrine.

The case at bar presents no such question. The circumstances relied on as putting the purchasers upon inquiry are, as we have seen, insufficient to make that inquiry a duty. Hence, under the special circumstances of the case which lead to a conclusion, not speculative, but reasonably certain, we have deemed it just to consider what would have been the result of direct inquiry of the complainant in respect of the nature of the title then held by Dutton.

If this case necessarily turned upon the contentions above considered, we would be compelled to affirm the decree as the inevitable result of the conclusions announced thereon; for it is a well-settled rule that one who has put it within the power of another to commit a fraud upon himself and a third person, who parts with value without notice, must suffer the consequences rather than visit them upon that person.

4. We come now to consider the case from another point of view made clear by the testimony, though it may not be specifically presented by the pleadings.

As before suggested, it is not controverted that complainant was grossly defrauded by Dutton, and that as to him she is entitled to have restoration of her property—a right that has been accorded her in the matter of the Connecticut Avenue property. She is entitled, therefore, to all such relief as can be afforded without injury to the just rights and interests of others.

Whilst Dutton was apparently vested with a legal title to the New Hampshire Avenue lots, he held it, in the view of a court of equity, as a trustee for the complainant.

Saving the rights of innocent purchasers from Dutton, her right was paramount, and any equities he might have, arising out of his dealings with such persons, resulted to her.

Now it is clear that, as between Dutton, and Warner and Wine—vendor and vendees—equity will construe a trust in favor of the former from the relations of principal and agent which the testimony shows existed between them.

Putting Richardson out of further consideration, as a mere figure-head—a person interposed as a conduit of title—Warner and Wine purchased, and received title from Dutton. They were at the time the controlling members of the firm of B. H. Warner & Co., real-estate brokers, who appear in the preliminary contract as the agents of Dutton, and not of Richardson.

It is a well-established rule of law that an agent to sell cannot, either directly or indirectly, become the purchaser at his own sale. Michoud *v.* Girod, 4 How. 503, 554; Veazie *v.* Williams, 8 How. 134, 152; Hoyt *v.* Latham, 143 U. S. 553, 566; Robertson *v.* Chapman, 152 U. S. 673, 681; 1 Amer. & Eng. Encyc. Law, p. 1075.

It is claimed that Mrs. Mussey was the agent of Dutton, and not

B. H. Warner & Co.; but the testimony is distinctly against the claim.

It is very true that she was originally his agent, and so continued to act; but B. H. Warner & Co. associated themselves with her, and practically displaced her, for their names and not hers, appear in the written contract as agents of the vendor. This contract was made an exhibit to the answer of Richardson to the original bill, wherein he avers a purchase through them as agents of Dutton, and was made part of the answer and proof of the defendants; and they are bound by it. It is also in proof that of the $750 paid by Dutton as commissions for effecting the sale, B. H. Warner & Co. received $500 and Mrs. Mussey $250.

There can be no doubt, therefore, that this sale could have been annulled by Dutton upon a timely bill for that purpose, without regard to adequacy of consideration, or complete fairness in all other respects. The inquiry in such a proceeding is not whether there was or was not fraud in fact. The transaction is what the inflexible rule of equity, founded in the soundest public policy, denominates a fraud in law, as differentiated from fraud in fact.

This right of Dutton to disaffirm the sale necessarily results to the complainant, for whom he must be regarded as a trustee by construction of equity.

The disaffirmance can only be decreed, however, upon condition that the complainant shall repay Warner and Wine the money actually paid by them to Dutton, and all other sums that may have been paid by them in the discharge of taxes and incumbrances, less such sums as they may have received, or ought in the exercise of due diligence to have received, as rents and profits of the property, since their possession began. Upon such payment they should be decreed to reconvey the property to the complainant, who to have equity must do equity.

It may be, that to obtain this relief the bill will have to be amended to some extent. If so, it can be done without reopening the case for further testimony. Doubtless, too, a reference to the auditor will be necessary for a statement of the account between the parties before a final decree can be entered.

It follows that the decree dismissing the bill must be reversed, and the cause remanded with directions to vacate the said decree, and take such further proceedings in accordance with this opinion as may be expedient and proper.

The costs of this appeal will be divided equally between the parties. It is so ordered.

Reversed.

1297–1299 THURSDAY, *February 8th, A. D.* 1900.

LILY ALYS GODFREY, Appellant,
vs.
STEPHEN A. DUTTON, CORA M. DUTTON, His Wife; Frederick M. Czaki, Mary Alice Godfrey, Louis Wine Richardson, Brainard H. Warner, and Louis D. Wine. } No. 892, January Term, 1900.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said supreme court, in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said supreme court with directions to vacate the said decree, and take such further proceedings in accordance with the opinion of this court, as may be expedient and proper. The costs of this appeal to be divided equally between the parties.

Per MR. JUSTICE SHEPARD.

February 8, 1900.

1300 In the Court of Appeals of the District of Columbia.

BRAINARD H. WARNER ET AL., Appellants,
vs.
LILY ALYS GODFREY. } No. 1011.

Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
BRAINARD H. WARNER ET AL. } No. 17631. In Equity.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Filed Mar. 1, 1900. J. R. Young, Clerk.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the justices of the supreme court of the District of Columbia, Greeting:

Whereas lately, in the supreme court of the District of Columbia, before you or some of you, in a cause between Lily Alys Godfrey, complainant, and Stephen A. Dutton, Cora M. Dutton, his wife;

Frederick M. Czaki, Mary Alice Godfrey, Louis Wine Richardson, Brainard H. Warner, and Louis D. Wine, defendants, equity, No. 17631, wherein the decree of the said supreme court, entered in said cause on the 24th day of January, A. D. 1899, is in the following words, viz:

"This cause coming on to be heard upon the pleadings and evidence and having been argued by the counsel for the parties respectively and submitted to the court at the December, 1898, term thereof, and having been duly considered, it is thereupon by the court this 24th day of January, A. D. 1899, adjudged, ordered, and decreed that as against the defendants Louis W. Richardson, Brainard H. Warner, and Louis D. Wine the bill and amended bills of the complainant be, and the same hereby are, dismissed with costs, and that the said defendants do recover their said costs against the complainant and against the American Surety Company of New York, her surety in the undertaking for costs filed herein on the 16th
1301 day of July, 1897, pursuant to the terms of said undertaking, and that said defendants have execution therefor as at law.

A. B. HAGNER,
Asso. Justice."

as by the inspection of the transcript of the record of the said supreme court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas in the present term of January, in the year of our Lord one thousand nine hundred, the said cause came on to be heard before the said Court of Appeals on the said transcript of record and was argued by counsel:

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, reversed; and it is further ordered that this cause be, and the same is hereby, remanded to the said supreme court with directions to vacate the said decree and take such further proceedings in accordance with the opinion of this court as may be expedient and proper, the costs of this appeal to be divided equally between the parties.

And that the said complainant, Lily Alys Godfrey, recover against the said defendants seven hundred and thirty-nine dollars and ninety cents for one-half of the costs herein expended and have execution therefor.

February 8, 1900.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause in conformity with the opinion and decree of this court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Richard H. Alvey, Chief Justice of said

Court of Appeals, the 1st day of March, in the year of our Lord one thousand nine hundred.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Costs of Complainant.

½, clerk...	$70.65
½, printing record	669.25
	$739.90

(Endorsed:) 17631. Eq. Court of Appeals of the District of Columbia, No. 892, January term, 1900. Lily Alys Godfrey, appellant, *vs.* Stephen A. Dutton *et al.* Mandate remanding for further proceedings. Filed Mar. 1, 1900.

1302 *Amendment to Bill.*

Filed Mar. 27, 1900.

In the Supreme Court of the District of Columbia, Holding a Special Term in Equity.

LILY ALYS GODFREY, Complainant,
vs.
STEPHEN A. DUTTON ET AL., Defendants. } Equity. No. 17631.

To the supreme court of the District of Columbia, holding a special term in equity:

Now comes the complainant and, by leave of the court first had and obtained, amends her bill of complaint in this cause in manner following—that is to say, by inserting after the 9th paragraph of said bill of complaint as amended and filed July 17, 1897, the following:

Complainant further shows that at the time of the said purchase by the said Warner & Wine they were, as members of said firm of B. H. Warner & Co., agen s for the said Dutton to find a purchaser for said premises; that as such agents they were without legal right to become purchasers without the knowledge and assent of their employer; and complainant is advised and believes, and so believing charges, that the said Warner and Wine, for the said firm of B. H. Warner & Co., did not inform the said Dutton that they, the said Warner and Wine, were the parties in real interest as purchasers, but concealed such fact and held out the said Louis Wine Richardson as a person to whom they had, as agents for said Dutton, made sale of said premises. Wherefore complainant charges that such purchase by the said Warner and Wine was fraudulent at law and voidable at the election of said Dutton or of this complainant, for whom said Dutton held title under a constructive trust, by reason of his deceits and frauds aforesaid.

And complainant also amends her said amended and supple-

mental bill by inserting after the statement in paragraph twelve thereof, that she had made demand upon the defendant Richardson for a reconveyance to her of her said property, but that he refuses so to reconvey, the following.

This complainant here tenders herself ready and willing to pay to the said defendants or any of them, upon a reconveyance to her of said premises, such sum, if any, as the court may find to have been paid by them or any of them on account of said property and which should in equity and good conscience be repaid them by her.

BIRNEY & WOODWARD,
Solicitors for Complainant.

(Endorsed:) Leave is hereby granted complainant to file this amendment to the bill. Job Barnard, justice. March 27, 1900.

1303 *Answer of Brainard H. Warner and Louis D. Wine to the Amendment to Bill.*

Filed Mar. 27, 1900.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } Equity. No. 17631.

Answer of Brainard H. Warner and Louis D. Wine to bill as amended March 27th, 1900.

The defendants Brainard H. Warner and Louis D. Wine for answer to the amendment to the bill of complaint in the above-entitled cause this day filed, answering, say:

1. They deny that the firm of B. H. Warner & Co. were agents for the defendant Stephen A. Dutton to find a purchaser for the real estate in controversy, as alleged by said amendment, or that the said firm or any of its members ever were the agents of the said Stephen A. Dutton for any purpose whatsoever. It is true that in Exhibit L. W. R. No. 1, filed as an exhibit to the answer of the defendant Louis W. Richardson to the original bill in this cause, "B. H. Warner & Co." are mentioned as agents of unnamed parties of the first part, but they aver that this circumstance grew out of the fact that a printed form of memorandum of sale belonging to the said firm, in which their names were printed as agents of the vendor, was used in the transaction, the same being the said Exhibit L. W. R. No. 1, and by a purely clerical omission the name of the said firm was not struck out and that of Mrs. Ellen S. Mussey, who was the only agent of the said Stephen A. Dutton in the matter, inserted instead. So far from being the agents of Stephen A. Dutton, neither of these defendants nor any member of the firm of B. H. Warner & Co. was aware at the time the said memorandum of sale was prepared who was the owner of the property described in it, agency for which owner is now sought to be charged upon them, and the

name of the vendor was accordingly left blank in the said memorandum for that reason. Both the said Ellen S. Mussey, who was the agent of the said Stephen A. Dutton, and the said Stephen A. Dutton himself well knew throughout the entire transaction that the firm of B. H. Warner & Co. represented the purchaser of the said property, and in no way represented or claimed to represent the said Stephen A. Dutton.

Further answering the said bill as now sought to be amended, these defendants show to the court that in the beginning of this controversy they offered to restore to the complainant the property in dispute upon terms of being reimbursed simply the moneys they had actually expended in its purchase, which proposition was refused by the complainant, who insisted upon attempting to
1304 regain the property without reimbursing these defendants, either wholly or in part for their said outlay, by seeking to establish against them express and flagrant frauds and perjury, through testimony which the courts have found to be wilfully and consciously false, and in her efforts so to do has subjected these defendants to great expense in defending themselves against the said charges, namely, to costs exceeding the sum of six thousand dollars; and, as these defendants are advised and believe, and therefore aver, the amendment this day filed by her is an incompetent and inequitable departure from the case as heretofore presented and insisted upon by her and one proceeding under different legal premises from those relied upon in and by her original, amended and supplemental bills, making an entirely different, new, and independent case, and calling for a defense different from that required under her said original and amended supplemental bills; and they are further advised and believe, and therefore aver, that it is contrary to equity and good conscience that, after having refused to accept the offer of these defendants to reconvey the property upon being reimbursed their expenditures, and after having subjected them to the great expense and burden of defending themselves against the said charges so wrongfully brought against them, now to amend her bill by demanding reconveyance of the property upon terms merely of paying to them such sums as have been paid by them on account of the property.

These defendants have received notice from the solicitors of the complainant of an application to the court to permit the filing of her said amendment of this date and to follow the same immediately by a decree requiring these defendants to convey the said property to her upon payment to them "of such sums of money as they have actually paid to Stephen A. Dutton at the time of the conveyance of said property by said Dutton to the said Louis Wine Richardson and such other sums as they may since then have paid in the discharge of taxes and incumbrances resting upon such property, less, however, such sums as they, or any of them, may have received as rents and profits of the property since their possession began," without affording these defendants the opportunity to take any testimony to disprove the allegation of said amendment that the firm of B. H. Warner & Co. were agents for Stephen A. Dutton. These defendants,

on the contrary, are advised and believe, and therefore aver, that they are entitled to answer the said allegation now for the first time brought forward against them, and to take testimony in their defense in that regard, and they submit to the court that they are entitled so to do.

BRAINARD H. WARNER.
LOUIS D. WINE.

W. F. MATTINGLY,
J. J. DARLINGTON, *Solicitors.*

1305 DISTRICT OF COLUMBIA, *ss:*

We, Brainard H. Warner and Louis D. Wine, on oath say that we have read the foregoing answer by us subscribed and know the contents thereof; that the matters therein set forth as of our own personal knowledge are true, and that the matters and things therein alleged upon information and belief we believe to be true.

BRAINARD H. WARNER.
LOUIS D. WINE.

Subscribed and sworn to before me this 27th day of March, A. D. 1900.

HENRY J. GROSS,
[SEAL.] *Notary Public.*

Decree and Reference to Auditor.

Filed Mar. 27, 1900.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY, Plaintiff,
vs.
STEPHEN A. DUTTON ET AL., Defendants. } Equity. No. 17631.

Upon consideration of the mandate and opinion of the Court of Appeals in this cause, it is this 27th day of March, 1900, ordered, adjudged and decreed that the decree heretofore entered by this court dismissing the bill of complaint in this cause be, and the same is hereby, vacated and set aside, and that the complainant have execution against the defendants Brainard H. Warner and Louis D. Wine for seven hundred and thirty-nine dollars and ninety cents, the amount adjudged to her by said Court of Appeals for costs in said court.

It is further ordered that the complainant have leave to amend her amended and supplemental bill herein in the manner indicated in the said opinion of the Court of Appeals, which being now done, and the answer of the defendants Warner and Wine thereto having been filed, and it appearing to the court from the opinion of the Court of Appeals that the complainant is entitled to have said lots 1, 2, 3, and 66, in square No. 134, conveyed to her upon the payment by her to the defendants Warner and Wine the money actu-

ally paid by them to the defendant Stephen A. Dutton and all other sums that have been paid by them in the discharge of taxes and incumbrances, less such sums as they may have received or ought in the exercise of due diligence to have received as rents and profits of the property since their possession began, it is this 27th day of March, A. D. 1900, ordered that this cause be, and the same hereby is, referred to the auditor of the court, upon the proofs already in the cause and such further proofs as may be offered, to ascertain and report to the court the amount to be paid by the plaintiff to the defendants Warner and Wine to entitle her to a conveyance of said parcels of land to her.

JOB BARNARD, *Justice.*

1306 *Report of Auditor.*

Filed May 5, 1900.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } No. 17631, Equity Docket 41.

This cause is referred to the auditor to ascertain and report the amount to be paid by the plaintiff to the defendants Warner and Wine to entitle her to a conveyance to her of lots 1, 2, 3, and 66, in square 134. After due notice I proceeded under this order of reference, counsel for the plaintiff and defendants being present.

In the schedule herewith I have stated an account of the money actually paid by the said defendants to the said Stephen A. Dutton as purchase-money. In the account presented by the said defendants this item is stated as $7,186.33.

It appears, however, that $500.00 of this sum was taken by the said defendants as commissions, and is therefore excluded from this statement. I have then stated the amount of taxes, interest upon the trust indebtedness, and payment for water rent and repairs. From the aggregate of these several sums I have deducted the rents collected by the said defendants from September 30th, 1896, to March 31st, 1900, inclusive, the result showing the amount to be paid by the plaintiff to the said defendants.

The claim for disbursements presented by the said defendants includes a number of payments to solicitors and counsel and for costs of the said defendants. In behalf of the plaintiff objection is made to these items, and, construing the order of reference as limiting the allowance in this account to the payment of purchase-money and the sums paid in the discharge of taxes and encumbrances, I have excluded other disbursements from the annexed statement of account.

JAS. G. PAYNE, *Auditor.*

Auditor's fee, $15.00.

Account showing the amount to be paid by the plaintiff to the defendants Brainard H. Warner and Louis D. Wine to entitle her to a conveyance of the said lots one, two, three, and sixty-six, in square one hundred and thirty-four.

Amount paid as purchase-money, not including $500.00 taken as commissions		6,586.33
Taxes paid by said defendants		1,056.26
Interest paid by them—		
On indebtedness of 3,500.00	735.00	
" " " 4,000.00	960.00	
" " " 10,000.00	2,100.00	
		3,795.00
1307 & 1308 Paid water rents		16.47
" for repairs		91.70
		11,545.76
Less rents collected from September 30, 1896, to March 31, 1900, inclusive, per statement filed		1,090.48
Amount to be paid as above		10,455.28

JAS. G. PAYNE, *Auditor.*

* * * * * * *

1309 GODFREY *vs.* DUTTON.

MONDAY, *April 30th*, 1900—10.30 p. m.

Hearing pursuant to notice.

Present: Mr. Darlington, for the defendants, and Mr. Birney, for the complainant.

Mr. DARLINGTON: In behalf of the defendants Warner and Wine, I offer a statement containing the receipts from the property payments to Dutton and disbursements on account of the property, also containing the expenses to which they have been subjected on account of this suit, exclusive of the examiner's fee, which is also offered in evidence, amounting to $1,626.00.

I submit, on behalf of the defendants, that they are entitled to reimbursement, including solicitors' fees and costs, in view of the fact that the record shows that at the beginning of this suit

1310 Warner & Wine offered to convey the property to the plaintiff on being reimbursed their actual disbursements at that time. This is shown by the deposition of E. H. Thomas, and also in connection with the deposition of James E. Fitch. I submit that, this offer being then declined, the defendants should be reimbursed the costs which were incurred from the refusal to accept it.

Counsel for the plaintiff accepts the statement of receipts as shown in the account offered as correct, and of the items claimed as disbursements he objects to the following:

The 500.00 of the 7,086.33 found in the first item, this sum of 500.00 being the amount retained by the defendants Warner & Wine.

Mr. DARLINGTON: That sum went to Warner, Wine & Company.

Mr. BIRNEY: As commissions to the firm of B. H. Warner & Company upon the purchase price of 25,000.00 agreed to be paid Stephen A. Dutton. We also object to the allowance of all amounts claimed to have been paid attorneys for services in this cause and to a witness fee of 1.25 paid one Vaughan, and also to the taxed costs and examiner's fees as shown in the short copy, none of these being chargeable under the decree of the Court of Appeals and the order of the court in special term following the decree of the Court of Appeals.

The case is then submitted to the auditor.

Exceptions of Warner and Wine to Report of Auditor.

Filed May 10, 1900.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } Equity. No. 17631.

The defendants Brainard H. Warner and Louis D. Wine except to the disallowance in and by the auditor's report, filed herein on the fifth day of May, A. D. 1900, of their costs and expenses as set forth in the account presented by them to him and returned with his said report, aggregating $5,292.85, and also of the examiner's fees incurred by them in their defense, amounting to $1,626 additional, on the ground that, as shown by the testimony of E. H. Thomas, Esquire, nowhere refuted, and also in connection with the testimony of James E. Fitch, said defendants, at the beginning of this suit, offered to reconvey the property in controversy to the complainant upon reimbursement of their actual disbursements at that time, and that, the defendants' said costs and expenses having been incurred solely by reason of the complainant's refusal of the said offer and of her effort to regain her property without said reimbursements by the establishment of unfounded charges of fraud and criminality against them, her right to change her position in
1311 that regard, if it exists at all at this stage of the case, is in equity subject to the duty of making good to them the actual costs to which they were subjected by her then refusal of the only relief now claimed.

Said defendants also except to the said report, in that it allows them no interest upon the purchase-money, taxes, interest, and other charges paid by them, set forth in the said report and in the statement accompanying the same, although charging them with the rents and profits of the said property.

W. F. MATTINGLY,
J. J. DARLINGTON,
Sol'rs for Def'ts Warner and Wine.

Replication.

Filed May 31, 1900.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } 17631.

Now comes the complainant and joins issue with the defendants Brainard H. Warner and Louis D. Wine upon their answer to the complainant's last amendment to her bill of complaint.

BIRNEY & WOODWARD,
Counsel for Complainant.

Order Overruling Exceptions to Auditor's Report and Ratifying Same.

Filed Jun- 13, 1900.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY, Complainant,
vs.
STEPHEN A. DUTTON, Defendant. } No. 17631. Equity.

This cause coming on for further hearing upon the record and proceedings herein and the exceptions to the auditor's report, and being heard, argued by counsel, submitted to and considered by the court—

It is this 13th day of June, 1900, adjudged, ordered, and decreed that the said exceptions be, and they are hereby, overruled, and the said report ratified and confirmed, and that the defendants Brainard H. Warner and Louis D. Wine are hereby decreed to convey unto said complainant, Lily Alys Godfrey, her heirs or assigns, said lots numbered one (1), two (2), three (3), and sixty-six (66), in said square numbered one hundred and thirty-four (134), in the city of Washington, District of Columbia, upon the payment to them by the said complainant of the said sum of $10,455.28, as reported by the auditor, and such further sums as they may
1312 have paid since the close of the account embraced in said report on account of taxes, encumbrances, and ordinary expenses necessarily incurred in the management of said property in excess of rents received by them therefor, and in default by said complainant in the payment of said sums within ninety days from this date the bill of complaint herein shall stand dismissed, with costs. In the event that such payment is made within said ninety days neither party shall be entitled to judgment for costs herein against the other, but the respective parties shall pay their own costs.

JOB BARNARD, *Justice.*

Order for Severance on Appeal.

Filed Jun- 14, 1900.

In the Supreme Court of the District of Columbia.

LILY A. GODFREY
vs.
STEPHEN A. DUTTON ET AL. } No. 17631. In Equity.

The defendants Brainard H. Warner and Louis D. Wine having stated to the court that they desire and intend to appeal from the decree passed herein on the thirteenth day of June, 1900, to the Court of Appeals of the District of Columbia, now, therefore, in order that said defendants may prosecute such appeal, it is this 14th day of June, 1900, on motion of J. J. Darlington and Wm. F. Mattingly, solicitors for said defendants, ordered that the other defendants to this cause, viz., Stephen A. Dutton, Cora M. Dutton, his wife; Frederick M. Czaki, Mary Alice Godfrey, and Louis W. Richardson, be, and they are hereby, notified that unless they signify to the court their intention to join in said appeal on or before the 30th day of June, 1900, and do so join, said defendants, Warner and Wine, be, and they are hereby, permitted to sever in their appeal from said decree and to perfect and prosecute the same.

And it appearing to the court that said defendants hereby notified are all non-residents, it is further ordered that service of this notice be by publishing a copy of this order once in the Washington Law Reporter and five times in the Evening Star newspaper prior to said June 30th.

A. B. HAGNER,
Asso. Justice.

Memorandum.

June 28, 1900.—Proof of publication of order for severance filed.

1313 *Acknowledgments of Service of Order of Court in Regard to Severance on Appeal.*

Filed Jun- 28, 1900.

Blair & Thom, attorneys and counsellors at law, No. 416 Fifth street N. W., Washington, D. C.

JUNE 26, 1900.

William F. Mattingly, Esq., 435 7th street N. W., city.

DEAR SIR: Your letter of the 21st instant, enclosing copy of notice of publication in equity 17631, was received by me today upon my return to the office after several days' absence. I am not now and have not for several years represented Miss Godfrey in the case mentioned and we have no connection of any kind with any of the parties to the suit. I therefore return your enclosure.

Very truly yours, CORCORAN THOM.

WASHINGTON, D. C., *June 27th*, 1900.

I acknowledge service of notice of the order of June 14, 1900, in No. 17631, equity, relative to appeal, as per annexed advertisement.

E. H. THOMAS,
Solicitor of Record for Louis W. Richardson.

(The following is a copy of the advertisement referred to in the above letter:)

Filed June 14, 1900. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

LILY A. GODFREY
vs.
STEPHEN A. DUTTON ET AL. } No. 17631. In Equity.

The defendants Brainard H. Warner and Louis D. Wine having stated to the court that they desire and intend to appeal from the decree passed herein on the thirteenth day of June, 1900, to the Court of Appeals of the District of Columbia, now, therefore, in order that said defendants may prosecute such appeal, it is this 14th day of June, 1900, on motion of J. J. Darlington and Wm. F. Mattingly, solicitors for said defendants, ordered that the other defendants to this cause, viz., Stephen A. Dutton, Cora M. Dutton, his wife; Frederick M. Czaki, Mary Alice Godfrey, and Louis W. Richardson, be, and they are hereby, notified that unless they signify to the court their intention to join in said appeal on or before the 30th day of June, 1900, and do so join, that said defendants, Warner and Wine, be, and they are hereby, permitted to sever in their appeal from said decree and to perfect and prosecute the same; and it appear-
1314 ing to the court that said defendants hereby notified are all non-residents, it is further ordered that service of this notice be by publishing a copy of this order once in the Washington Law Reporter and five times in the Evening Star newspaper prior to said June 30.

A. B. HAGNER,
Asso. Justice. [SEAL.]

A true copy.
Test:

J. R. YOUNG, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

je 15–5t

WASHINGTON, D. C., *June* 22, 1900.

I acknowledge service of notice of the order of June 14, 1900, in No. 17631, equity, relative to appeal, as per annexed advertisement.

I do not represent defendants Dutton, although my name appears as such in the record.

JOHN B. LARNER.

To Jno. B. Larner, Esq., sol. of record for Stephen A. & Cora M. Dutton, defendants:

(The advertisement annexed to the above letter is the same as the one annexed to the letter of E. H. Thomas.)

Appeal.

Supreme Court, District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } 17631.

The defendants Brainard H. Warner and Louis D. Wine hereby appeal from the decree passed herein June 13th, 1900, to the Court of Appeals of the District of Columbia and issue citation.

J. J. DARLINGTON,
WM. F. MATTINGLY,
Sol'rs for said Defendants.

July 3, '00.
Appeal as ordered entered.
1900, 7, 3.

BY CL'K.

Memorandum.

July 3, 1900—Appeal bond filed.

1315 In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } No. 17631. In Equity.

The President of the United States to Lily Alys Godfrey, Greeting.

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal entered in the supreme court of the District of Columbia on the 3 day of July, 1900, wherein Brainard H. Warner and Louis D. Wine are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 3 day of July, in the year of our Lord one thousand nine hundred (1900).

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 2 day of July, 1900.

A. A. BIRNEY,
Attorney for Appellee.

Directions to Clerk for Preparation of Record on Appeal.

Filed Jul- 3, 1900.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } # 17631. Eq.

The clerk will please make out the following for transcript of record on appeal:

Amendment to bill, Mar. 27, 1900.
Answer of Warner & Wine thereto, "
Decree.
Report of auditor.
Exceptions thereto.
Confirmation of auditor's report; decree; order severance on appeal.

MEM.—Proof of publication filed June 28, '00.

MEM.—Acknowledgment of service of order of appeal by John B. Larner, solicitor of record for Stephen A. Dutton and wife; Corcoran Thom for Mrs. Godfrey and E. H. Thomas for Louis W. Richardson.

Bond on appeal, &c.

J. J. DARLINGTON,
W. F. MATTINGLY,
Sol'rs for App'u's.

7, 3, '00.

1316 *Stipulation as to Transcript on Second Appeal.*

Filed Jul- 7, 1900.

In the Supreme Court of the District of Columbia.

LILY ALYS GODFREY
vs.
STEPHEN A. DUTTON ET AL. } No. 17631, Eq. Doc.

It is hereby stipulated by the parties to the appeal in this cause, taken from the decree of the court passed herein on the 13th day of June, 1900, that said appeal shall be heard upon the printed transcript of the record already on file in the Court of Appeals, subject to its approval, supplemented by the filing and printing of a transcript of the mandate of the Court of Appeals, filed herein on the 1st day of March, A. D. 1900, and of all proceedings in this court subsequent thereto, the said printed and supplemental transcript com-

prising the complete record of said cause, for all purposes of the appeal from said decree of June 13th, 1900.

A. A. BIRNEY,
Sol'r for Compl't.
J. J. DARLINGTON,
Sol. for Appellants.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 27, inclusive, to be a true and correct transcript of the record, as per directions to clerk herein filed, copy of which is made part hereof, in cause No. 17631, equity, wherein Lily Alys Godfrey is complainant and Brainard H. Warner *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 21st day of July, A. D. 1900.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1011. Brainard H. Warner *et al.*, appellants, *vs.* Lily Alys Godfrey. Court of Appeals, District of Columbia. Filed Jul- 26, 1900. Robert Willett, clerk.

1317 WEDNESDAY, *October 10th, A. D.* 1900.

BRAINARD H. WARNER and LOUIS D. WINE, Appellants, *vs.* LILY ALYS GODFREY. } No. 1011.

The above-entitled cause was submitted to the consideration of the court on the printed record and briefs filed herein by Mr. J. J. Darlington attorney for the appellants, and by Mr. A. A. Birney, attorney for the appellee.

1318 BRAINARD H. WARNER and LOUIS D. WINE, Appellants, *vs.* LILY ALYS GODFREY. } No. 1011.

Opinion.

Mr. Justice SHEPARD delivered the opinion of the court:

On February 8, 1900, this court reversed a decree dismissing the bill of the present appellee, and remanded the cause for further proceedings made necessary by the conditions of that reversal. The opinion then delivered disposed of all the substantial questions in

the case, and the final decree in the court below was ordered to be passed in conformity therewith. 28 Wash. Law Rep. 171.

In that opinion it was suggested that the bill might need formal amendment to obtain the relief to which it was declared the complainant was entitled.

Such an amendment was filed on March 27, 1900, to which the defendants made answer, denying that they were the agents of Dutton in making the sale of the property to Richardson, who took the title for their benefit. They also averred that in the beginning of the controversy they offered to restore the title to complainant if she would reimburse them for the expenditures made in the purchase from Dutton. On this ground they prayed for a provision in the final decree compelling complainant to pay them the amount of their expenditures in conducting the litigation, as well as costs.

On the same day reference was had to the auditor to state the account between the parties in accordance with the directions contained in the mandate and opinion of this court.

Appellants presented an account to the auditor, showing not only the items of expenditures on account of the property for taxes, repairs and interest, but also a large sum for attorney's fees and other expenses incurred in defending the suit. The account thus presented, including the amount of the purchase-money paid to Dutton, amounted to $17,393.13.

The auditor rejected the items of attorney's fees and expenses, and, deducting the amount of rents received by the appellants, reported them as entitled to reimbursement in the sum of $10,455.28.

Appellants excepted to the auditor's report, in so far as it disallowed their charges. These were overruled, and the report was confirmed and final decree passed in accordance therewith.

The questions raised on this appeal will not be entertained.

In so far as they may present questions of law and fact, as sought to be raised on the amended answer filed in reply to the amendment of the bill, heretofore referred to, they are concluded by the former decree. The action of the court was in strict conformity with the mandate of this court and the accompanying opinion. In so far as they raise the mere question of an award of costs, they are not the subject of appeal. Canter *v.* Insurance Co., 3 Pet. 307, 319; Wood *v.* Weiman, 104 U. S. 786, 792; Russell *v.* Farley, 105 U. S. 433, 437; Paper Bag Cases, *idem*, 766, 772; City Bank, etc., *v.* Hunter, 152 U. S. 512, 516.

There remains nothing to do but affirm the decree; which is ordered, with costs. Affirmed.

1319 FRIDAY, *October 12th, A. D.* 1900.

BRAINARD H. WARNER and LOUIS D. WINE, Appellants, *vs.* LILY ALYS GODFREY. } No. 1011, October Term, 1900.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said supreme court, in this cause, be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE SHEPARD.

October 12, 1900.

FRIDAY, *October 19th, A. D.* 1900.

BRAINARD H. WARNER and LOUIS D. WINE, Appellants, *vs.* LILY ALYS GODFREY. } No. 1011.

On motion of Mr. J. J. Darlington, attorney for the appellants in the above-entitled cause, it is ordered by the court that said appellants be allowed an appeal to the Supreme Court of the United States on giving bond to act as a supersedeas in the sum of two thousand five hundred dollars.

1320 Know all men by these presents, that we, Brainard H. Warner and Louis D. Wine, as principals, and *and* Clarence B. Rheem, as surety, are held and firmly bound unto Lily Alys Godfrey in the full and just sum of twenty-five hundred dollars, to be paid to the said Lily Alys Godfrey, — certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of ——, in the year of our Lord one thousand nine hundred.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said court, between the said Brainard H. Warner and Louis D. Wine, appellants, and the said Lily Alys Godfrey, appellee, a decree was rendered against the said Brainard H. Warner and Louis D. Wine, and the said Brainard H. Warner and Louis D. Wine having appealed in open court from the said decree to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Lily Alys Godfrey, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington within 30 days from the date thereof,

Now, the condition of the above obligation is such, that if the said Brainard H. Warner and Louis D. Wine shall prosecute their said appeal to effect, and answer all damages and costs if they fail to

make their plea good, then the above obligation to be void; else to remain in full force and virtue.

BRAINARD H. WARNER. [SEAL.]
LOUIS D. WINE. [SEAL.]
GEO. W. F. SWARTZELL. [SEAL.]
CLARENCE B. RHEEM. [SEAL.]

Sealed and delivered in the presence of—
ALEXANDER T. HENSEY.
WILLIAM M. TERRELL.

Approved by—
R. H. ALVEY, *Ch. Justice.*

Satisfactory.
A. A. BIRNEY,
Counsel for Appellee.

[Endorsed:] No. 1011. Brainard H. Warner *et al. vs.* Lily Alys Godfrey. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Oct. 24, 1900. Robert Willett, clerk.

1321 UNITED STATES OF AMERICA, *ss:*

To Lily Alys Godfrey, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Brainard H. Warner and Louis D. Wine are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable R. H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this twenty-fourth day of October, in the year of our Lord one thousand nine hundred.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted October 24 1900.

A. A. BIRNEY,
For Appellee.

[Endorsed:] Court of Appeals, District of Columbia. Filed Oct. 24 1900. Robert Willett, clerk.

1322 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 1321, inclusive, contain a full,

true and complete transcript of record and all proceedings had in said Court of Appeals in the cases of Lily Alys Godfrey, appellant *vs.* Stephen A. Dutton *et al.* and Brainard H. Warner and Louis D. Wine, appellants *vs.* Lily Alys Godfrey, Nos. 892 and 1011 respectively as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 1st day of November A. D. 1900.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

1323 In the Supreme Court of the United States, October Term, 1900.

BRAINARD H. WARNER ET AL.
vs.
LILY ALYS GODFREY. } No. —.

Assignment of Errors.

Now come the appellants in this cause and, as the assignment of errors relied upon by them therein, state as follows:

The court below erred,

1. In reversing the decree of the supreme court of the District of Columbia, passed in said cause on the 24th day of January, 1899.

2. In reversing the said decree upon a ground neither set up in the pleadings, presented in the lower court, nor set up by the appellee in any manner at any prior stage of the cause.

3. In allowing the appellee to introduce a new cause of action or ground of relief by amendment, after final decree below, accompanied by denial to the appellants of opportunity to take testimony or otherwise defend against the case presented by the bill as so amended.

4. In holding, upon the evidence in the cause, that the appellants were the agents of Stephen A. Dutton.

5. In holding that the appearance of the name of the firm of B. H. Warner & Co. as agents of unnamed vendors in the preliminary contract of sale of April 10, 1896, under the circumstances of the case as disclosed by the record, constituted purchase of the property by the appellants "a fraud in law."

1324 6th. In confirming the decree of the supreme court of the District of Columbia of June 13th, 1900, overruling the appellants' exceptions to the auditor's report.

7th. In denying the appellants interest upon the purchase-money, or upon the taxes, or upon the interest or other charges paid by them on account of the property in controversy, although charging them with the rents and profits.

8th. In permitting the appellee, after decree against her, carrying costs, and affirmed upon every point in dispute, to impose upon

the appellants their costs of the litigation by setting up, by way of amendment, a wholly new cause of action, and a prayer for relief upon terms proposed by the appellants and declined by her at the beginning of the suit.

9th. In holding that, in this cause the question of costs is not reviewable, on appeal.

W. J. MATTINGLY,
J. J. DARLINGTON,
Solicitors for Appellants.

Service accepted this 22d day of January, 1901.

A. A. BIRNEY,
Counsel for Appellee.

1325 [Endorsed:] No. —. In the Supreme Court of the United States. Brainard H. Warner *et al. vs.* Lily Alys Godfrey. Assignment of errors. W. J. Mattingly, J. J. Darlington, solicitors for appellants.

1326 [Endorsed:] File No. 17,965. Supreme Court U. S., October term, 1900. Term No. 480. Brainard H. Warner & *al.* app'ts *vs.* Lily Alys Godfrey. Assignment of errors & acceptance of service of same. Filed Feb'y 1, 1901.

1327 In the Supreme Court of the United States, October Term, 1900.

BRAINARD H. WARNER ET AL. *vs.* LILY ALYS GODFREY. } No. —.

Designation of Parts of Record to be Printed.

The appellants hereby designate the following as the parts of the record which they consider necessary for consideration of their assignments of error, in the above cause:

From page 1, to "testimony on behalf of complainant," inclusive, on page 67.

The two letters of Mary Alice Godfrey and the letter of J. Roberts Foulke, at pp. 85–'6.

First four questions and answers on cross-examination of J. Roberts Foulke, on page 86.

Last question and answer, on page 87.

Deposition of Louis W. Richardson from page 119 to but not including question begun at bottom of page 125.

From part of question near bottom of page 127 commencing, "When this suit was commenced against you" to and including "cross-examination," at top of page 134.

From question commencing "You have said that you think" on page 134, to and including last question and answer but one on page 135, and omitting colloquy between counsel on page 135.

From question on page 137 commencing "You were asked on

your direct examination," to but not including, " redirect examination " on page 138.

1328 Deed from Richardson to Warner and Wine, at pp. 140–'1.

Deed from Dutton and wife to Richardson, at pp. 142–'3.

Cross-examination of Edgar R. Berry, at p. 148.

Deposition of John B. Wight, pp. 149–161.

Deposition of William E. Edmonston, pp. 162–175.

Depositions of Baumgras, Robertson, Lacey, Kent, Mimack, Blankman, Fitch, Edson, Tyler and Saunders, pp. 175 to 224.

Deposition of Lily A. Godfrey, pp. 233 to 268.

Deposition of T. Conrad Dodge, Jr., pp. 274 to 283.

Depositions of Charles J. Bell and Stilson Hutchins, pp. 283 to 291.

Deposition of H. R. Dulany, pp. 371–374.

Deposition of Fr. C. Stevens, pp. 376–379.

Depositions of James R. Ellerson, Charles E. Banes, pp. 381 to 389.

Depositions of William B. Gurley and W. Riley Deeble, pp. 392 to 405.

Deposition of John C. Davidson, pp. 409–'11.

Deposition of Archibald M. McLachlen, pp. 452–458.

Defendants' Testimony.

Depositions of Fairfax, Linkins, Hamilton, Wilson, Shoemaker, Duncanson, Fox, Early, Trimble, Simpson, Emmons, Ross, Duvall, Dove, Dyer, Norment and Waggaman, pp. 880 to 969.

Deposition of Walter R. Wilcox, pp. 1004–1008.

Deposition of Ellen S. Mussey, pp. 1015–1026, 1041–1050, 1072–1078.

Deposition of Robert I. Fleming, pp. 1028–1034.

Depositions of Sloan, Harding, Townsend and McLeran, at pp. 1053 to 1072.

Depositions of Thomas J. Owen, Louis D. Wine and Clarence B. Rheem, pp. 1079 to 1135.

1329 Deposition of E. H. Thomas, pp. 1146 to 1175.

Deposition of B. H. Warner, page 1177, to but not including interrogatory on page 1178 commencing " Do you know one Allen A. Dutton." Also on page 1180, from interrogatory commencing " What, in your opinion," to answer " No reason," both inclusive. Also from interrogatory on page 1181 commencing " When and by whom, as you remember," to answer on page 1182, " Not at all." The word " cross-examination," on page 1192; then from interrogatory on page 1210 commencing " What was your motive " to and including answer on page 1219 commencing " I had no particular interest," both inclusive. Also from interrogatory at page 1220 commencing " Will you kindly state " to answer on page 1221 closing with " refresh my memory, with your permission," both inclusive. Also from interrogatory at page 1225 commencing " Do you remember after the conviction," to bottom of page 1226. Also

from "recross" at page 1228 to but not including "By Mr. Darlington," at page 1229.
Deposition of T. Conrad Dodge, pp. 1230–'1.
Deposition of Louis D. Wine, at pp. 1232.

Rebuttal.

Deposition of John Joy Edson, pp. 1241–'2.
Opinion of Justice Hagner, pp. 1251 to 1270.
Decree and notice of appeal, page 1270.
Assignment of errors, page 1272, down to and including "5. That the court erred in dismissing complainant's bills of complaint herein," on page 1273.
Opinion of Court of Appeals, pp. 1292–'6.
Mandate of Court of Appeals, pp. 1300–'1.
Remaining pages of record, 1302 to 1322, omitting "Account of B. H. Warner and L. D. Wine," at pp. 1307–1309.

W. J. MATTINGLY,
J. J. DARLINGTON,
Sol's for Appellants.

Service accepted this 22d day of January, 1901.
A. A. BIRNEY,
Counsel for Appellee.

1330 [Endorsed:] No. —. In the Supreme Court of the United States. Brainard H. Warner *et al. vs.* Lily Alys Godfrey. Designation of parts of record to be printed. W. J. Mattingly J. J. Darlington sol's for appellants.

1331 [Endorsed:] File No. 17,965. Supreme Court U. S. October term, 1900. Term No. 480. Brainard H. Warner *et al.* appellants, *vs.* Lily Alys Godfrey. Designation by appellants of parts of record to be printed, & acceptance of service. Filed Feb'y 1, 1901.

1332 In the Supreme Court of the United States, October Term, 1900.

BRAINARD H. WARNER ET AL.
vs.
LILY ALYS GODFREY. } No. —.

The appellee hereby designates the following parts of the records as necessary to be printed for just consideration of the assignments of error, in addition to those specified by the appellants:

1. Testimony of J. Roberts Foulke (with all letters) from its commencement, p. 83 to cross-examination p. 86.
2. Deposition of Edgar R. Berry to but not including last question on p. 145.

3. Complainant's Exhibit No. 1, beginning "B. H. Warner & Co.'s sales department" p. 461.

A. A. BIRNEY,
Counsel for Appellee.

1333 [Endorsed:] File No. 17,965. Supreme Court U. S., October term, 1900. Term No. 480. Brainard H. Warner *et al.*, app'ts, *vs.* Lily Alys Godfrey. Designation by appellee of parts of record to be printed. Filed Feb'y 1, 1901.

Endorsed on cover: File No. 17,965. District of Columbia Court of Appeals. Term No. 191. Brainard H. Warner and Louis D. Wine, appellants, *vs.* Lily Alys Godfrey. Filed November 10, 1900.

No. 191.

Office Supreme Court U.S.
FILED
MAR 4 1902
CLERK.

Brief of Mattingly & Darlington for Appellees.

Filed Mar. 4, 1902.

In the Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 191.

BRAINARD H. WARNER AND LOUIS D. WINE, *Appellants*,
vs.
LILY ALYS GODFREY.

BRIEF FOR APPELLANTS.

W. F. MATTINGLY,
J. J. DARLINGTON,
Solicitors for Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 191.

BRAINARD H. WARNER AND LOUIS D. WINE, *Appellants,*

vs.

LILY ALYS GODFREY.

BRIEF FOR APPELLANTS.

Statement of the Case.

On March 26th, 1896, the appellee and her mother conveyed to one Stephen A. Dutton lots 1, 2, 3 and 66, in square No. 134, in the City of Washington, together with other property, the beneficial ownership of which lots is claimed to have been held by appellee. The consideration of this conveyance was an agreement by Dutton to convey to her certain property in the City of New York, to which property, some months later, she learned Dutton had, in fact, no title. At the time of her conveyance to Dutton, there was an incumbrance of $10,000 on lots 1 and 66, held by the Provident Trust Company of Philadelphia, an incumbrance of $3,500 on lot 2, and an incumbrance of $4,000 on lot 3.

Shortly after receiving this conveyance, Dutton came to Washington, bringing a letter of introduction from a prominent and influential business man of New York to Mrs. Ellen S. Mussey, a member of the local bar, and endeavored here to negotiate a larger loan upon the property above described. Failing, after diligent effort, to accomplish this, he authorized her to make sale of the property for the sum of $25,000. She thereupon called upon the firm of B. H. Warner & Co., composed of the appellants, Mr. Clarence B. Rheem and G. W. F. Swartzell,

her interview being principally with the appellant Wine, to whom she offered the property at the price named, stating, also, that Mr. Dutton would allow a commission of three per cent. upon this sale, two-thirds of which commission she would allow to appellants' firm. After some conference, the appellants themselves concluded to make the purchase, and designated L. W. Richardson, a young and unmarried nephew of Mr. Wine, to take the title, in accordance with what the undisputed testimony, by the witnesses on both sides, shows to be the usual custom in Washington where two or more persons having wives unite in the purchase of property, and especially where it is encumbered, requiring the renewal of mortgages, etc., the object being the greater convenience in making the necessary subsequent conveyances.

Accordingly, on the 10th day of April, 1896, Mr. Wine left at the office of Mrs. Mussey a preliminary contract of sale, blank as to the vendor, who was then unknown to the appellants, and signed by Mr. Richardson, which Dutton signed later. This memorandum was upon a printed form prepared for use by B. H. Warner & Company in cases in which they were agents for the vendors, and was in the words and figures following:

"BRAINARD H. WARNER. LOUIS D. WINE.
GEO. W. F. SWARTZELL. CLARENCE B. RHEEM.

Office of B. H. Warner & Co.,
916 F St. N. W., Washington, D. C.

Articles of agreement, made and entered into this 10th day of April, A. D. one thousand eight hundred and ninety-six, by and between ....., party of the first part and Louis W. Richardson, party of the second part, in manner and form following: The said party of the first part, in consideration of the sum of five hundred (500) dollars to *their* agents, B. H. Warner & Co., duly paid as a deposit, the receipt whereof is hereby acknowledged, hereby agree to sell unto the party of the second part, the

following-described real-estate in the city of Washington and District of Columbia; Lots 66, 1, 2 & 3, square 134, Wash., D. C.

For the sum of twenty-five thousand (25,000) dollars, which the said party of the second part agrees to pay to the said party of the first part as follows:

Seventy-five hundred (7,500) cash, balance, seventeen thousand five hundred (17,500) to be assumed, secured by deed of trust on the said described property, with interest at the rate of six per cent. per annum, payable ..... which amount is now upon the property and secured by a trust or trusts, and the said party of the first part, on receiving such payment at the time and in the manner above mentioned, shall execute, acknowledge and deliver to the said party of the second part, or to his heirs or assigns, a special warranty deed and conveyance, assuring to them the fee-simple of the said premises free from all encumbrances except as to the trust referred to above, which deed shall contain the usual full covenants. The terms of sale to be complied with in five days from the date hereof, and said deposit to be applied in part payment of the purchase of the said described real estate. Title to be good and marketable or deposit returned.

And it is understood that the stipulations aforesaid shall apply to and bind the heirs, executors, administrators, and assigns of the respective parties.

In witness whereof the parties to these presents have hereunto set their hands and seals the above day and date.

(Signed) S. A. DUTTON. [SEAL.]

(Signed) L. W. RICHARDSON. [SEAL.]

True copy:

HENRY J. GROSS,
Notary Public.

Nov. 17, 1896.

Signed, sealed and delivered in the presence of—

(Signed) ELLEN S. MUSSEY,
As to S. A. Dutton.

(Signed) C. B. RHEEM,
As to L. W. Richardson."

It will be observed from this preliminary contract that it purports to acknowledge the receipt by "the said party of the first part" of the sum of $500, "to their agents, B. H. Warner & Company, duly paid as a deposit"; and it is upon this phraseology of the preliminary contract that the present appeal principally turns.

The transaction was consummated upon the terms specified in this memorandum, and the difference between the agreed purchase price of $25,000 and the aggregate of incumbrances, taxes and expenses, was paid to Dutton by the Columbia Title Insurance Company, with which Company the necessary funds were deposited by the firm of B. H. Warner & Company on behalf of the purchasers.

On September 1st, 1896, the appellee filed her suit against Dutton, Richardson and others, alleging that her conveyance of the property above mentioned to Dutton was obtained by him through misrepresentation and fraud, that she had received no consideration therefor, and that the deed by Dutton to L. W. Richardson was without any valuable consideration, that Richardson was not an innocent holder for value, that he had no interest, legal or equitable, in the premises, and praying that the appellee might be re-invested with title to the property in controversy.

To this bill Richardson answered that he was an innocent purchaser for a valuable consideration, without notice of any equities of the appellee, and that his agents, the firm of B. H. Warner & Company, on his behalf, in good faith, in the usual course of business, and upon the faith of an examination of the title to the land made by the Columbia Title Insurance Company, had paid for the conveyance from Dutton $7,086.33, being the full amount of the $25,000 agreed to be paid, less taxes, the existing incumbrances upon the property, and the accrued interest thereon. The preliminary contract of sale was filed with the answer as an exhibit.

This answer, as will be seen, did not disclose the fact that Richardson held the title for the appellants. The reason for this omission is fully explained by the solicitor who prepared the answer, at pages 500 to 502 of the record. It appears, however, that the solicitor in question informed appellee's solicitor, the late J. M. Wilson, of the actual facts in the matter, and made a proposition to convey the property to the appellee upon repayment of the actual outlays of the appellants up to that time. Record, pages 503–504.

This proposition was not accepted, but was followed by an amended bill alleging that the appellants had such notice of the frauds of Dutton as to put them on inquiry, and to deny to them any benefit of the conveyance made by him; and, later, by an amended and supplementary bill to similiar effect, praying that the title to the property should be re-vested in her, subject only to the original incumbrances thereon. The amended and supplemental bill was followed by a long series of original and supplementary interrogatories addressed to the appellants, the object of the interrogatories being in part to show a prior acquaintance and course of dealing between them and Dutton, through which they were sought to be charged with notice of the character of the latter. The answers to the interrogatories denied all acquaintance with or knowledge of him prior to the transaction in controversy.

The original, amended and supplementary bills, with all the accompanying additional interrogatories, having been fully answered, and issue joined, the parties proceeded to the taking of testimony. At the first session for this purpose (the depositions not appearing chronologically in the record), the proposition to convey the property to the appellee on payment to the appellants of their actual advances was renewed, and declined on the ground that the

former proposition to this effect had not been "categorically offered;" that the appellee had now been obliged to incur heavy expenses in the cause, and that the appellants had purchased with a knowledge of such facts and circumstances as put them upon inquiry and deprived them of standing in equity. Record, page 160.

The issues under the pleadings were practically three, viz:

(1). That the sale of the property to the appellants was at so inadequate a price as to constitute a fraud, and to put the purchasers upon notice.

(2). That the circumstances of sale were such as to disprove the defense offered, viz: that of innocent purchasers, without notice.

(3). That the appellant Warner, contrary to his sworn answers in the cause, had been associated with Dutton in sundry previous transactions prior to the one in suit, thus furnishing presumptive evidence that he was familiar with the character of Dutton, and, in addition, impeaching the credit to be given to his answer and to his testimony in relation to the transaction.

It was upon the last of these three issues that the greater portion of the testimony in the cases, omitted from the present record, was taken. Its character is shown by the summary of it contained in the opinion of Mr. Justice Hagner, before whom the cause was originally heard. Record, pages 560–563.

At the original hearing, before the Supreme Court of the District of Columbia, every issue under the pleadings as they then stood was found for the present appellants, upon the grounds stated in the opinion last referred to, and the bill was dismissed.

On appeal to the Court of Appeals, every issue under the pleadings as they then stood was, in like manner, decided

in favor of the present appellants; but, because of the phraseology in the printed memorandum of sale before referred to, reciting the receipt of five hundred dollars by B. H. Warner & Company as agents of the vendors, and because of the fact that the firm of B. H. Warner & Company had received from Mrs. Mussey $500 of the commission paid by Dutton, it was held by that court that the present appellants, who were the real purchasers, "were at the time the controlling members of the firm of B. H. Warner & Company, real estate brokers, who appear in the preliminary contract as the agents of Dutton, and not of Richardson"; that "an agent to sell cannot, either directly or indirectly, become the purchaser at his own sale", and that "there can be no doubt, therefore, that this sale could have been annulled by Dutton upon a timely bill for that purpose, without regard to adequacy of consideration, or complete fairness in other respects," that "the inquiry in such a proceeding is not whether there was or was not fraud in fact," that "the transaction is what the inflexible rule of equity, founded in the soundest public policy, denominates a fraud in law, as differentiated from fraud in fact," and that this "right of Dutton to disaffirm the sale necessarily results to the complainant, for whom he must be regarded as a trustee by construction of equity." Record, 578-9.

The opinion of the Court of Appeals states that Richardson, in his answer, averred that he "purchased from the appellants as agents of Dutton;" but, as will appear upon reference to the answer of Richardson (Record, p. 12), this was simply an inadvertence upon the part of the learned Court. His answer clearly and distinctly alleges that the firm of B. H. Warner & Company were the agents of the purchaser, and although, as before stated, the preliminary contract was filed with the answer, the fact that B. H.

Warner & Company were agents of the purchaser and not of Dutton was so *manifest* that it was accepted by everybody in interest throughout the voluminous record and down to the hearing in that court; so that, notwithstanding the numerous amendments to the bill, all made subsequently to the filing of the answer and the preliminary contract, the Court of Appeals itself found the pleadings incompatible with relief upon the ground suggested by it without amendment. Such amendment is provided for as follows:

"It may be, that to obtain this relief the bill will have to be amended to some extent. If so, it can be done without reopening the case for further testimony." Record, p. 579.

Thereupon, on March 27, 1900, the appellee filed the further amendment to the bill which will be found at page 582 of the Record, alleging that appellants, as members of the firm of B. H. Warner & Company, were agents of Dutton to find a purchaser; that, as such agents, they were without legal right to become purchasers without his knowledge and consent; that they did not inform Dutton that they were the real purchasers, but concealed such fact from him; that their purchase was, for these reasons, "fraudulent at law and voidable at the election of said Dutton or of this complaint, for whom said Dutton held title under a constructive trust," &c., and concludes, for the first time, with an offer to pay the appellants, upon a reconveyance from them to her, "such sum, if any, as the court may find to have been paid by them or any of them, on account of said property, and which should in equity and good conscience be repaid them by her."

To this amendment the appellants answered, on the same day, denying that their said firm were agents for Dutton for any purpose whatsoever, and averring that the mention

of B. H. Warner & Company as agents of unnamed parties of the first part in the preliminary contract of sale grew out of the fact that the memorandum of sale in question was upon a printed form belonging to their firm, in which their names were printed as agents of the vendor, and that, by a purely clerical omission, the name of the firm was not struck out and that of Mrs. Ellen S. Mussey, who was the only agent of Dutton in the matter, inserted instead; that both the said Ellen S. Mussey and the said Stephen A. Dutton well knew, throughout the entire transaction, that the firm of B. H. Warner & Company represented the purchaser of the property, and in no way represented or claimed to represent Stephen A. Dutton; that the defendants had received notice from complainant's solicitors that they would appeal to the court, simultaneously with the filing of her amendment, for a decree requiring the appellants to convey the property to her upon the terms specified in the opinion of the Court of Appeals, without affording them an opportunity to take any testimony to disprove the allegation of the amendment that the firm of B. H. Warner & Company were agents for Stephen A. Dutton, and that the defendants claimed they were entitled to answer that allegation, then for the first time brought forward against them, and to take testimony in their defense in that regard. The answer, however, recited the fact that the appellants had, at the beginning of the controversy, offered to restore to the complainant the property in dispute upon terms of being reimbursed their actual expenditures; that she had insisted, on the contrary, in the effort to regain her property without such reimbursement, by seeking to establish against them express and flagrant frauds and perjury, through testimony which the courts had found to be wilfully and consciously false, thereby subjecting them to an expense exceeding six thousand dollars, and that, as they were

advised and believed, it was an incompetent and inequitable departure, after having been defeated in that attempt, and after having refused every overture, now to amend her bill and demand a reconveyance of the property upon the very terms repeatedly and persistently rejected by her, and without reimbursement of the burdensome costs to which she had subjected them by her refusal of their offers, and by her persistence in her erroneous charges against them and in her efforts to regain the property without any repayment of the purchase money paid by them. Record, pp. 583–5.

The Supreme Court of the District of Columbia, holding itself bound by the terms of the opinion of the Court of Appeals, on the very day that the amendment and answer thereto were filed, and without permitting the appellants to take any testimony in refutation of the claim that they were the agents of Dutton in the sale, decreed that they convey the property in controversy to the appellee upon payment by her to them of the moneys actually paid by them to Dutton and the sums paid by them in discharging the taxes and interest on the incumbrances, less such rents as they had received, and referred the cause to the auditor to state the accounts between the parties. Record, pages 585–6. The auditor accordingly made his report, deducting from the purchase-money paid by the appellants the $500 which came to their firm as a part of the commission, crediting them with only the principal of the taxes and interest paid by them, without allowing interest on those advances, and charging them with all rents received. The appellants claimed, before the auditor, that they should be allowed all costs of the litigation down to the time of the amendment, in view of their offers to the appellee, rejected by her, at the beginning of the suit to convey the property to her upon the precise terms upon which she was then claiming such reconveyance ; but the auditor found himself unable to

make this allowance, under the terms of the order of reference. Record, pages 586–588. His report was excepted to by the appellants, the exceptions were overruled, and a conveyance by the appellants to the appellee decreed upon payment of the advances as found by the auditor. Record, page 589. On appeal by appellants to the Court of Appeals, this decree was affirmed, and the present appeal taken to this Court. Record, pages 594–595.

Assignment of Errors.

As per the assignments of error filed in this Court, it is respectfully submitted that the court below erred—

1. In reversing the decree of the Supreme Court of the District of Columbia, passed in said cause on the 24th day of January, 1899.

2. In reversing the said decree upon a ground neither set up in the pleadings, presented in the lower court, nor set up by the appellee in any manner at any prior stage of the cause.

3. In allowing the appellee to introduce a new cause of action or ground of relief by amendment, after final decree below, accompanied by denial to the appellants of opportunity to take testimony or otherwise defend against the case presented by the bill as so amended.

4. In holding, upon the evidence in the cause, that the appellants were the agents of Stephen A. Dutton.

5. In holding that the appearance of the name of the firm of B. H. Warner & Co. as agents of unnamed vendors in the preliminary contract of sale of April 10, 1896, under the circumstances of the case as disclosed by the Record, constituted purchase of the property by the appellants "a fraud in law."

6. In confirming the decree of the Supreme Court of the District of Columbia of June 13, 1900, overruling the appellants' exceptions to the auditor's report.

7. In denying to the appellants interest upon the purchase-money, or upon the taxes, or upon the interest or other charges paid by them on account of the property in controversy, although charging them with the rents and profits.

8. In permitting the appellee, after decree against her carrying costs, and affirmed upon every point in dispute, to impose upon the appellants their costs of the litigation by setting up, by way of amendment, a wholly new cause of action, and praying relief upon the very terms proposed by them and declined by her at the beginning of the suit.

9. In holding that, in this cause, the question of costs is not reviewable on appeal."

As has already been pointed out, the Supreme Court of the District of Columbia and the Court of Appeals have concurred in finding adversely to the appellee and for the appellants, every issue raised by the pleadings, down to the time of the first hearing in the latter court. As to the issue principally litigated, the examination of the witnesses in regard to which constituted the greater part of this immense record, the conclusion of the learned justice who heard the case in the first instance was that "the entire testimony adduced in behalf of the complainant, designed to show that Warner was ever in the company of Stephen A. Dutton on either of the occasions as described, is absolutely untrue, and that by far the greater part of it consists of unfounded falsehoods, uttered from bad motives, and attempted to be sustained by deliberate perjury." Record, page 560. And this was so unanswerably manifest upon the record that, as pointed out in the opinion of the Court of Appeals, the appellee's counsel in that court admitted the failure of her testimony upon that point, and was commended by the court for so doing. Record, page 574.

This court, having repeatedly declared its indisposition to interfere with the concurring judgments of the courts below upon questions purely of fact, in the absence of obvious error or serious mistake in the consideration of the evidence (Furrer vs. Ferris, 145 U. S., 132; Morgan vs. Daniels, 153 U. S., 120, 123–4), and since the ground upon which the appellee, by her last amendment to her bill, prayed for and obtained relief below is wholly unconnected with either of those questions, it is not the purpose of appellants to discuss in this court the remaining original issues, viz: Whether the sale was at an inadequate price, such as to constitute a badge of fraud and to put the purchaser on notice, and whether the circumstances of the sale were such as to impeach the defense of an innocent purchaser, without notice. The brief below, upon these questions, on behalf of the appellants, will be added as an appendix to this brief, for the convenience of the court in case either of them should be urged upon its attention on behalf of the appellee.

The several assignments of error may, for convenience, be grouped under the five propositions following, viz:

I.

Was it not error below to treat the printed reference in the preliminary contract of sale to the firm of B. H. Warner & Company as agents for the vendor of the property described, as conclusive evidence that they were such agents?

II.

Was it not error, not only to reverse the decree of January 24th, 1899, upon an issue not raised by the pleadings, and to permit their amendment for the purpose of raising it, but to require that, when so raised, it should be disposed of "without reopening the case for further testimony," thus denying the appellants the opportunity to prove the facts in

regard to the new issue thus raised, as averred in their answer?

III.

Was it not error, under the facts and circumstances in this case, to permit the appellee to make her amendment of March 2, 1900, and to decree a conveyance to her of the property in dispute upon the very terms upon which she had declined to receive it at the beginning of the litigation, except upon terms of paying costs to that date and reimbursing the appellants their expenses of the litigation?

IV.

Was it not error to disallow the appellants interest upon their outlays on behalf of the property, including taxes and interest upon incumbrances paid by them pending the litigation?

V.

Was it not error for the Court of Appeals to reverse the original decree of the Supreme Court of the District of Columbia?

I, II.

The first and second of these questions may conveniently be considered together.

The ground upon which the learned court below treated as conclusive the reference in the preliminary contract to Warner and Company as agents of the vendor has not been disclosed. The only supposable ground or analogy of which counsel have been able to conceive is the rule which forbids the alteration or contradiction of a written contract by contemporaneous parol evidence; and that this rule has no application to the mere recitals of a receipt, in or out of a deed, and even *inter partes*, is well settled.

Clapp v. Tirrell, 20 Pick., 247, 250; Paige v. Sherman, 6

Gray, 511, 513; Bower v. Bell, 20 Johns., 339; Stewart v. R. R. Co., 141 Ind., 55; O'Brien v. Gilchrist, 34 Me., 554; Ellis v. Willard, 5 Selden, 529; Burke v. Railway, 40 Minn., 35; Adams v. Davis, 109 Ind., 21; Thompson v. Maxwell, 74 Iowa, 415; Alexander v. Thompson, 42 Minn., 499; Bingham v. Weiderwax, 1 N. Y., 509; Millard *vs.* Hathaway, 27 Cal., 119; Davis *vs.* Snider, 70 Ala., 315; Leggett v. Buchhalter, 30 Miss., 421, 423; Louisville &c., Railway Co., *vs.* Power, 119 Ind., 269, 271; Md. Ins. Co. v. Ruden, 6 Cr., 338; Harris v. Johnston, 3 Cr., 317–18.

The case of receipts is an exception to the general rule that oral testimony is not admissible to contradict or vary a written contract. They are recitals, not contractual, and may always be explained by oral testimony. Brooks v. White, 2 Metc., 283, 287–8, and citations.

A receipt, though contained in a memorandum of sale, is not a contract, but merely evidence of the performance of a contract. Hildreth v. O'Brien, 10 Allen, 104.

If, then, the preliminary contract either were, or purported to be, a contract between Dutton and the firm of B. H. Warner and Company, this mere recital that the $500 deposit had been received by the latter as agents for the former, had nothing of a contractual character about it, nor anything which could estop either party from proving by parol that the recital was in this respect simply the result of a clerical inadvertence or mistake. That it was such a mistake, and that Warner and Company neither were nor were understood by Dutton to be his agents is, as hereinafter pointed out, entirely manifest both from the affirmative testimony upon the point which appears in the record, and from Dutton's conduct and manner of dealing with them in the transaction.

But, unless the rules of evidence do make the recital in the preliminary contract, though plainly a mistake, con-

clusive, then it was clear error to deny to appellants the right to take testimony, if further testimony were at all needed, upon the question whether Warner and Company were the agents of Dutton, when the appellee's amendment of March 27th, 1900, for the first time, made the question of such agency an issue in the case.

Up to the time of the hearing in the Court of Appeals, as before stated, there never had been any allegation that Warner and Company had been the agents of Dutton, nor any intimation to the appellants that the appellee, with the preliminary contract and all the other facts long before her, proposed ever to set up such a claim. The appellants naturally relied, as they had the right to do, upon the elementary proposition that a party may not state one case in his bill, and rely upon a different one in the evidence. The *allegata* must give the basis for the *probata*. (Boone v. Chiles, 10 Pet., 177.) A party can no more recover upon a case proved but not alleged, than upon a case alleged but not proved. Foster v. Goddard, 1 Black, 518.) The court can consider only what is put in issue by the pleadings—averments without proofs and proofs without averments are alike unavailing. (Washington Railroad v. Bradley, 10 Wall., 303.)

In departure from the rule repeatedly recognized by itself that a case will not be allowed to turn in an appellate tribunal, and especially where great expense has been incurred by the parties in the taking of testimony, upon questions not made below, even where they are jurisdictional (Tyler v. Moses, 13 D. C. App., 428, 422–3; Manning v. C. & P. Telephone Co., 29 Wash. L. R., 342, 344), the court below, in the case at bar, not only reversed the decree of January 24th, 1899, upon a question not made below or raised by the pleadings, but declared that, when introduced into the case by amendment, relief based upon it should be

granted with out re-opening the testimony, or allowing the appellants any opportunity to prove that, as matter of fact, no such claim to relief existed.

That this was serious error, it is respectfully submitted, is most apparent.

III.

The third proposition, it is submitted, presents a question of the plainest nature.

As appears from the uncontradicted testimony of Mr. E. H. Thomas, the original solicitor for the appellants (Rec., pp. 503–4), although the answer to the original bill for reasons which he explains did not disclose that the present appellants were the actual purchasers and beneficial owners of the property, that fact was fully explained by him to the late J. M. Wilson, the counsel for the appellee, and the proposition made to convey the property to her simply upon terms of reimbursing the appellants for their actual outlays, this offer being accompanied by an exhibition to Judge Wilson of the checks by which those outlays had been made and the certificate of title upon the faith of which the appellants had purchased. Her solicitor, thereupon, made an investigation, and found that these checks, or their proceeds, had actually been disbursed by the Columbia Title Insurance Company in the transaction as claimed. Then followed an announcement to appellants' solicitor that, instead of accepting his proposition, an additional bill would be filed which would "seriously reflect upon Mr. Warner," and that this bill would be "published in the public press of the city"—a threat which, on being communicated by the solicitor to the court, resulted in an order requiring the appellee to submit to the court any amendment which might be proposed by her before it would be allowed. Then, after the filing of the supplementary and amended bill, with the num-

erous interrogatories thereto, studiously omitting any proposition in the nature of reimbursement, the appellants, nevertheless, at the first session for the taking of testimony, as before stated, referred to and renewed their previous offer to convey the property to the appellee on being reimbursed their actual advances, accompanied with the uncontradicted statement that the offer had been made before any witness was examined or any notice given for the taking of testimony. Record, page 160. The proposition was thereupon in terms declined, and the case proceeded with by the appellee upon the theory that the appellants had been guilty of such actual fraud, accompanied by express notice and by actual perjury in regard to their acquaintance with and relations to Dutton, as to deny to them any standing in a court of equity, and to entitle the appellee to restoration of her property without any repayment to them.

It was in consequence of the appellee's rejection, at the beginning of the litigation, of these very terms upon which she now seeks a reconveyance, and of her insistence upon the attempt to escape them by fixing upon the appellants gross fraud and the gravest criminality, through testimony which both the lower courts have condemned, that the expense of the enormous record below was incurred, the taxable costs of the appellants for commissioners' fees alone aggregating $1,626, and their other necessary expenses in attempting to defend themselves from the charges in question amounting to $5,292.85.

While it is true that, ordinarily, solicitors' costs are left to be borne by the parties themselves, it is nevertheless within the province of courts of equity to allow them. There could scarcely be a stronger equity for their allowance, we submit, than the case of a complainant who has repeatedly refused to accept the only relief, voluntarily tendered her, to which she could under any circumstances be equitably

entitled who has persisted in an unfounded and costly litigation for years, on issues insisted upon by her which were wholly unfounded, who has compelled the parties in adverse interest to incur burdensome costs and expenses in the defense of themselves from utterly groundless charges of crime, unsupported by honest or reputable witnesses, and who only, after each and every of her allegations had been declared unfounded by both the original and the appellate tribunal, then asks to be allowed to claim, by an amendment to her pleadings, the very relief which her opponents had repeatedly tried to have her accept in the beginning, and without payment of the costs which her course alone has made necessary.

In the second opinion of the Court of Appeals, found at page 595 of the record, it is objected that, in so far as the appeal then before the court was concerned, it raised simply a question of an allowance of costs, and that this is not the subject of appeal. There are, however, it is respectfully submitted, two answers to this objection.

In the first place, this rule, applicable to questions of cost merely, is expressly excluded where the question of cost is involved with other questions raised by the appeal. The court has entire control of costs, as well as the merits, where it has possession of the case on appeal from final decree. Trustees vs. Greenough, 105 U. S., 527; Burns vs. Rosenstein, 135 U. S., p. 456; R. R. Co. vs. Car Co., 5 D. C. App., p. 548.

In the second place, the rule in question rests upon the ground that the allowance of costs, as ordinarily presented, is discretionary with the court of first instance, and, like other questions of discretion, is not ordinarily the subject of appeal. In the present case, however, the decree of the court of first instance does not represent its discretion, but its compliance with and obedience to the opinion and

mandate of the Court of Appeals in disposing of the first appeal to that tribunal. That mandate and opinion declared that the appellee should receive a reconveyance of the lands in dispute upon repayment to the appellant of "the money actually paid by them to Dutton, and all other sums that might have been paid by them in the discharge of taxes and incumbrances, less such sums as they may have received, or ought in the exercise of due diligence to have received, as rents and profits of the property since their possession began."

The trial court felt, and properly, that it was bound by the terms of the mandate and opinion; that it was not within its power to permit the appellants to take any testimony upon the new question of fact introduced by the amendment, that it could not even allow the appellants interest upon any of their outlays for the benefit of the property or to preserve it from tax or foreclosure sale, although charged with all rents received from it; and still less that it could exercise its own discretion in fixing any equitable terms in regard to costs, in addition to those fixed by the Court of Appeals. Its action was, as the Court of Appeals declares, "in strict conformity with the mandate of this court and the accompanying opinion." It could go no further in the matter of costs than to deny them to the appellee, and this it did.

With regard to the ordinarily taxable costs of the case, it is submitted that it would be most inequitable to permit the complainant to litigate a cause upon unfounded and untenable grounds in the first instance, to sustain in consequence a decree against her on those issues, including a decree for a very large amount of costs to which her opponents had been unjustly subjected, and then, by an amendment in the appellate tribunal, to introduce a wholly new and distinct ground for relief, and thereby to be relieved of her liability

for the costs incurred and already decreed against her because of her previous persistence in claims which both courts declare to be unfounded.

IV.

In the fourth place, we submit that the appellants were clearly entitled to interest on their outlays on behalf of the property, including taxes, and moneys paid out by them for interest upon the incumbrances placed upon the property by the appellee before her conveyance to Dutton.

The aggregate of these taxes and interest payments was $4,959.43. As shown by the record, after the dispute as to the value of the property had arisen, and it was claimed that the inadequacy of the purchase price was so great as to charge the appellants with notice of fraud, the appellant Warner proposed a sale of the property under these outstanding incumbrances, the validity of which was admitted by all the parties, so that a good title under them could be obtained, and which sale would, therefore, tend to determine its value. This proposition upon his part, however, was treated as fresh evidence of his desire to overreach the appellee and to obtain possession of her property by a forced sale, although unaccompanied by any offer upon her part to meet the interest charges, without which such a sale was inevitable. Thereupon, the appellants continued to pay them, their outlays of this character, down to the time of the auditor's report, being $3,795. No possible reason can exist, we submit, in equity or fairness, why they should not be allowed interest upon their said advances, or why the appellee should be entitled to the use of their money in preserving the property from the forced sale to which she objects, without allowing them any compensation therefor.

Their net outlays, at the time of the auditor's report, after charging them with all rents received, and, in effect,

with the five hundred dollars allowed their firm by Mrs. Mussey out of the commission on the sale, was $10,455.28. The major portion of this amount, as shown by the record, was borrowed money, upon which they themselves paid interest. If entitled to reimbursement at all, we submit that such reimbursement should include interest on these outlays.

V.

In the last place, however, we submit that the reversal by the Court of Appeals of the original decree in this cause, which dismissed the appellee's bill with costs, was erroneous, and should be itself reversed, reinstating that decree. The reversal in question was based upon the ground that the firm of which the appellants were members were agents for Dutton, and that, therefore, they were disqualified from becoming the purchasers. The claim that they were such agents rests only upon the printed form of preliminary contract above referred to, and upon the fact that the firm received from Mrs. Mussey $500 out of the commissions that she was allowed by Dutton for negotiating the sale.

As has already been mentioned, although this preliminary contract was filed as an exhibit to the answer of Richardson at the earliest stage of the controversy, the facts and circumstances of the transaction, as known to all the parties, were such that no one ever claimed, prior to the suggestion of the Court of Appeals, that Warner & Company were the agents of Dutton. This is apparent, not only from the opinion of Mr. Justice Hagner, in which all the contentions on behalf of the appellee are discussed *seriatim*, and from the assignment of errors in the Court of Appeals, which includes no such claim (Record, pages 569–70), but from the character of the cross-examination throughout the record, and the form of the interrogatories addressed by appellee's counsel to all the witnesses who were conversant with the

sale. The theory, throughout the litigation and down to the time of the hearing in the Court of Appeals, was, as indicated by the assignment of errors in that court (Record, page 570), that Warner and Wine had such facts within their knowledge as put them upon inquiry, and charged them with notice of the frauds of Dutton, and that they used Richardson's name in the transaction simply to conceal the fact that they were the actual purchasers, and thus exempt themselves from the consequences of such notice.

Fortunately for the appellants, in view of the fact that they were denied the privilege of offering any testimony after the issue now in question was raised, the testimony adduced in connection with the circumstances of the sale clearly and conclusively proves that they were not such agents.

With regard to the payment by her to the firm of B. H. Warner of the $500, Mrs. Mussey, at page 432 of the record, was examined, and testified as follows:

"Q. Will you state the circumstances under which you learned in the fall that Mr. Richardson was a dummy in that transaction and not the real purchaser?

"A. I have no recollection now about the circumstances.

"Q. So that at the time of this transaction, in April, 1896, when you agreed with Mr. Warner and Mr. Wine to share with them the commission, they to have two-thirds, or $500, and you to have one-third, or $250, so far as any knowledge that you had on the subject is concerned, you were treating with them *as the brokers of Louis W. Richardson, or whoever the purchaser was.* Is that so?

"A. I treated with them as the brokers, and had no interest in who purchased it, so long as the money was paid for it.

"Q. Do you know why it was that they concealed from you that they were the purchasers themselves, and allowed you to suppose that Richardson was the purchaser, and not a dummy?

"A. I never asked them about it, and I know nothing about it."

It is apparent, therefore, that B. H. Warner & Company were then claiming, and were then understood to be, the brokers of the purchaser, not the seller, and that the commissions were shared by Mrs. Mussey with that firm in that capacity.

That Mr. Dutton himself well knew that Messrs. Warner and Wine were not professing to be his agents is also shown by the testimony of Mrs. Mussey, who testifies, at page 382:

"I should like also to say that, on my second visit, I believe, to the office of Warner and Wine, at the request of my client, I asked if they would be willing to give him the privilege of repurchasing the property within a given time at an advance of $5,000, and Mr. Warner declined to tie up the property in that way, which fact I reported to my client."

The only member of the firm whom Dutton at any time met was the appellant Wine. As shown by the testimony of complainant's witness, Mr. Edmonston (page 109), Dutton had refused to allow the accrued taxes to be deducted from the purchase-money, and Mr. Wine was telephoned to go down and discuss that difference. Mr. Wine, at page 445, testified that he received this message, to the effect that Mr. Dutton "declined to make a deed for the property unless I would assume the accumulated interest and taxes on the property. I told him I would not do that at all; that he might consider the contract off if he made that demand, and Mr. Edmonston then insisted that I had better come over to his office, which I did immediately, and when I arrived there I found Mrs. Mussey, Mr. Dutton and Mrs. Dutton, to whom I was introduced by Mrs. Mussey. He and I had quite a little chat there about this accumulated interest and taxes, and finally I got a little cross and told him unless he

settled that way there would be no settlement at all, and I left the office, giving Mr. Edmonston that information—that unless Dutton allowed the accumulated interest and taxes in the settlement, there would be no deal with him. Later in the day, I learned that the transaction had been consummated as originally intended by the contract. I never had seen Dutton before, nor have I seen him since, neither had I ever heard of him before, nor did I know from whom we were purchasing the property, as may be shown by the contract that I drew. I left the party of the first part blank, to be inserted, which I believe is still in blank."

As further illustrating the position of the appellee and her counsel while the case was being prepared for trial, the following cross-examination of the witness Wine, at page 453, may be cited:

"Q. Why did you conceal from Mrs. Mussey, at the time of the purchase of said property in April, 1896, your true connection with the said transaction as purchaser, and *hold yourself out as the broker or representative of the dummy in whose name you took title to the property*, taking two-thirds of the commissions for selling the property to yourself?

"A. No motive at all, except as a matter of convenience to ourselves."

It is impossible, we submit, upon the record in this case, to hold that B. H. Warner & Company either were the agents of Mr. Dutton, or that he understood them to be. It was not surprising that, in view of the immense record which was presented in the Court of Appeals, that court, finding a reference to B. H. Warner & Company as the agent of the vendor in the preliminary contract, and that that firm had received a part of the commission, should have overlooked the testimony in the case bearing upon the subject, as above noted.

Let us suppose that Dutton had in all respects complied

with his engagements with the appellee, to her satisfaction, and that the present case was that of a bill filed by him to vacate the sale upon the ground that the blank printed form used in the preliminary contract described the appellants as his agent. What would be the inevitable result of such a suit, upon the facts proven? His agent, Mrs. Mussey, testifies that she understood B. H. Warner & Company to represent, not Dutton, but the purchaser, and she agreed to divide her commission with that firm upon that understanding. When she carried to them the preliminary contract, signed by Dutton, she, at his request, inquired whether they would not allow him the privilege of repurchasing the property at an advance of $5,000 within a given time, and was informed by them that they would decline to tie up the property in that way, which fact she reported to him. Then follow the circumstances, testified to by both Mr. Wine and Mr. Edmonston, of Dutton's refusal to allow deductions to the time of sale on account of accrued interest and taxes; the interview between Mr. Wine and himself at Mr. Edmonston's office upon that subject; his proposition that Wine should assume the accumulated interest and taxes on the property, Wine's refusal to do this, and his statement, on the contrary, that Dutton might consider the contract off if he made that demand; the termination of that interview by Wine's withdrawing, with instructions to Edmonston that the deal would be off unless the accumulated interest and taxes were allowed, Dutton's subsequent acquiescence in this demand of Wine's, and the consummation of the sale accordingly. We submit that it would be wholly impossible, upon such a conceded, undisputed state of facts, for Dutton successfully to claim, in such a suit as the present, that the reference to B. H. Warner & Company in the preliminary contract, as his agents, was anything more than the clerical error which the answer declares it to be, that he

understood that firm to be in any respects his agents, or that, on the contrary, he did not manifestly and clearly deal with them as the representatives of the purchaser, and as antagonistic to his interests, refusing to tie up the property by allowing him the desired right to repurchase, and declaring the sale off if he refused their demand for the allowance of taxes and interest to the time of sale.

It is respectfully submitted:

1. That the decrees of the Court of Appeals of February 8th, 1900, and of October 12th, 1900, should be reversed.

2. That the decree of the Supreme Court of the District of Columbia, of January 24th, 1899, was right, and should be reinstated and affirmed.

W. F. MATTINGLY,
J. J. DARLINGTON,
Solicitors for Appellees.

Appendix.

I.

Inadequacy of Price.

The area of the four lots in dispute is about 6,373 square feet, making the purchase price about $4.00 per square foot. The lots were unimproved, with the exception of a structure on lots 1 and 66, renting for about $50.00 per month, and which the witnesses on both sides agree added nothing to the market value of the lots, since it would require to be demolished before they could be utilized in such a manner as to yield any adequate return.

Twenty witnesses were called on behalf of the complainant to testify that the price paid was inadequate, while a still larger number, comprising a majority of the leading real-estate brokers in the city of Washington, and a number of property holders besides, testified to the contrary.

The question presented in this connection, it is submitted, is, not whether the value was, or was not, in fact, greater than the price paid, but whether there was any such disparity between the price and the value as to convince a Court of Equity that the vendees must have known, and did know, that the transaction was not one conducted in good faith by the vendor, and that it must have involved a fraud upon some one. The question was argued below, however, and is treated in the opposing brief here, as though the subject of inquiry were the actual adequacy or inadequacy of the price, and not a question of fraud and collusion between vendor and vendee, to be deduced from the supposed inadequacy.

In other words, the question was treated below, and here, as though a preponderance of evidence that the price was

inadequate would establish bad faith on the part of the purchasers, however numerous and credible the witnesses holding the contrary view. If Baumgras, Blankman, Bell, and seventeen other persons are right in supposing that the property was worth from fifty to one hundred per cent. more than the price paid, then, the argument is, any purchaser at that price is to be presumed guilty of fraud and bad faith, although such purchaser believed the price adequate, and was justified in so believing by the opinions of Chas. C. Duncanson, Robert I. Fleming, Thomas E. Waggaman, and twenty other leading real-estate dealers and property-owners in the city of Washington, any one of whom would be, in like manner, held guilty of collusion and fraud had he purchased upon the strength of his own opinion in the matter, and not upon that of the twenty persons subsequently collected as witnesses to a higher valuation, by the complainant.

If, however, the abstract or ultimate question of adequacy or inadequacy were assumed to determine the merits of this case, it is respectfully submitted that the weight of testimony is strongly with the appellees. And in the consideration of this question, the attention of the Court is respectfully invited to the superior prominence and qualifications as experts on values of the defendants' witnesses, taken as a whole, to those of the witnesses for the complainant.

The brief of the learned counsel for the appellant contents itself, in this connection, with enumerating the witnesses for the complainant, connecting with each such fact or circumstance as is supposed to give weight to his testimony, and wholly eliminating the evidence of its weakness, on the one hand, and, on the other, enumerating the witnesses for the defendants, with a like annexation to each of some supposedly disparaging circumstance connected with him. For example, complainant's witness Kent is

stated to be a "builder and dealer in real-estate," and that he made an offer for the property December 12, 1895, at a valuation of $51,000.00; complainant's witness Mimack is represented as living "very near the property," and as having "bought and sold real-estate and loaned money upon it for eighteen years;" complainant's witness John S. Blankman is described as "attorney and investor since 1875," etc., etc. The fact is wholly omitted that Kent is a Government clerk at a salary of $1,200.00 per annum, speculating in real-estate after office hours (Rec., pp. 142–4); that he owned no property which had not at least two or more incumbrances upon it (pp. 144–6), and that his offer of $51,000.00 was, not in money, but in mere equities, at fanciful values, one piece of property being offered at $28,000.00 which cost him less than $18,000.00, another piece being included in the offer at $12,000.00 which cost him less than $7,500.00 (pp. 146–8), etc.; that Mimack's transactions in real-estate were on two or three occasions only, the last of which was nine years before he testified (Rec., p. 159), etc.; that Blankman had made no sale since 1886 or 1887, the amount involved in that sale being only $1,500.00, that he had had but two real-estate transactions on his own account within the past ten years, and that he could name no clients for whom he had either purchased or sold property, or for whom he had made any loans (Rec., p. 156–7), etc. On the other hand, defendants' witness John A. Hamilton is described as a "grocer," ignoring his testimony that he has been a purchaser and owner of real-estate in Washington since 1870, and has appraised property for loans aggregating several millions of dollars (284–5); Robert I. Fleming is described as an architect and builder who disclaims being an expert in real-estate values, omitting his statement that he has had experience in real-estate and its value for thirty-one years (Rec., p. 392),

that he has bought and sold a great deal of real-estate in the northwest section of the city, and within a couple of squares of the property in controversy, being very nearly the pioneer in this locality (Rec., p. 393–4), and that he has bought and sold a great deal of real-estate in that section, having examined the property in controversy, itself, before its sale to the appellees, with a view to purchasing it (Rec., p. 395), etc.

Complainant's witness Beverley H. Robertson testifies that he has not bought or sold much real-estate (Rec., p. 138); her witness Frederick C. Stevens testifies that he has had nothing to do with real-estate since 1892, and that his judgment was based solely upon reported sales, without personal knowledge of any (Rec., pp. 239–41); her witness James R. Ellerson, who is quoted in the brief as valuing the property at $7.00 per square foot, testified that it is worth that much "if somebody could be found who wanted it—you could not sell it in the general market for that" (Rec., p. 244), and adds that he has never sold any property for as much as $4.00 per square foot (Rec., pp. 245); the witness Banes, quoted at $7.00 per square foot, states that his estimate is based on a sale to somebody who would want to build a handsome residence, that there are not many who desire $40,000.00 sites, and that it would be all "guess-work" to say how long it would be before a purchaser could be found at such a price (Rec., p. 248–9). The witness Wm. B. Gurley, who puts no valuation upon the property, but simply says that, if his, he would not sell it for less than $7.50 or $8.00 per square foot, is shown by the record, in his capacity as a sworn, official appraiser, to have appraised lot 1 at $3.00 per foot, lots 2 and 3 at $2.00 per square foot, and lot 66 at $2.25 per square foot (Rec., pp. 255, 323-4), the witness Deeble, quoted as fixing the value at between $6.00 and $7.00 per

foot, sold lot 3 to complainant's mother, in 1890 or 1891, before the panic, for $3.00 per square foot (Rec., pp. 261); the witness Davidson, quoted at from $6.00 to $6.50, testified that this valuation was for a purchaser who desired it for a residence, and that, from one who desired it for an investment, not more than $5.00 could have been realized (Rec., p. 268); the witness McLachlen, quoted as valuing the property at from $47,000.00 to $48,000.00, never sold a residence site for any price approximating that sum, his largest sale being at $16,000.00, for a lot with a house already on it (Rec., pp. 269–70)—never sold an unimproved site for more than $5,000.00 (Rec., p. 271), and never made a loan as large as $4,000.00 on a single residence site, knew of no sales in that locality for as much as $4.00 per square foot, and was employed to sell this property for a considerable period before the sale to Dutton, but never succeeded in receiving any offer for it (Rec., pp. 271–3).

Complainant's witnesses, Wight, Robertson, Fitch, Saunders, Dulaney and Deeble, also had the property in controversy in their hands for sale for years prior to the Dutton transaction, without ever receiving an offer for it. The witness Baumgras claims to have received several offers, but, upon cross-examination, these are shown to have been like those made by the witness Kent. Baumgras testifies that he cannot state what the properties were worth which were offered in exchange (Rec., p. 184), and that, in them, the parties offering had already mortgaged the property which they proposed to give for all that such property would bear, and that they would simultaneously have increased the mortgage on the Godfrey property, thereby realizing five or six thousand dollars in cash, and that this was the incentive to their several offers (Rec., pp. 132–3).

The value of the judgments of the witnesses Tyler and Dulaney upon the subject may be estimated by the fact that

both swear that the inability of half a dozen real-estate agents to sell the property at approximately their valuation, after five or six years of effort, and the fact that it might remain unsold for years, with accumulating taxes and loss of interest, would not at all effect their estimate of the value. The witnesses Chas. J. Bell, Stilson Hutchins, Frederick C. Stevens and others, testify that such contingencies would very materially affect the market value of the property.

There are, concededly, among complainant's witnesses several gentlemen whose opinions are entitled to respect. Mr. James E. Fitch values the property at $6.00 per square foot (Rec., p. 158), but adds that, although the property was in his hands in 1895, he never received an offer at any price; that he would not have considered it a bargain at the valuation he names; that he does not know what it would have brought at a forced sale, and that he has not known of a single sale of residence property since 1896, with such an area as this, at a price approximating anything like the valuation given by him. (162–'64). Mr. John Joy Edson, who thinks that the property was worth $40,000.00, and that a loan of $25,000.00 could have been obtained upon it, states that if his valuation committee, composed of Messrs. Hamilton, Wine and Fox, had valued the property at $4.00 per square foot, his institution would not have made any such loan (167), and he further admits that, in the valuation he placed upon the property, he supposed it embraced a considerably larger area than it did in fact include (549). Mr. Chas. J. Bell, who is quoted at a valuation of $6.00 per square foot, testifies that this value is only to a person who might wish the property for his own use, not to one purchasing to sell again (229); while Mr. Hutchins, quoted at from $6.00 to $8.00 per foot, states that his estimate is based upon a com-

parison with what he had heard other property had sold for, that it was not a quick-moving class of property, and that one or two transactions in the neighborhood might be a very inadequate criterion for judgment (Rec., pp. 233–4).

This brief will not be protracted by summarizing the testimony of each of the witnesses for the defense. Mr. Linkins, valuing the property at about $4.00 per square foot at private sale, had sold three lots in the same square, besides making loans in that square (277, 279–80). Messrs. John A. Hamilton and Albert F. Fox had been appraisers for the Washington Loan and Trust Co. and Mr. Chas. C. Duncanson, appraiser for the American Security and Trust Co., these three concurring in a valuation of from $4.00 to $4.50 per square foot, at private sale, and not for investment or speculative purposes (289, 309, 319). The opposing brief quotes Mr. Hamilton at $5.00 per square foot, ignoring the fact that this valutation was made upon an erroneous impression as to the area of the lot, and corrected by the witness at page 289. Albert A. Wilson, engaged in real-estate and insurance business since 1875, making loans for his insurance company, director of the Washington Loan and Trust Co., the National Bank of the Republic, the Real Estate Title and Insurance Co., and who had made all trustee sales for the Washington Loan and Trust Co., considers $4.50 per square foot a fair price at private sale, for the purpose of a private residence, not as an investment, and doubts if it would have brought $3.50 at public sale (Rec., pp. 290-92); Mr. Fairfax had sold a lot half a square distant on New Hampshire Avenue for $2.60 per square foot, and has various corner and other lots in the vicinity for which he has not been able to find purchasers at $2.25 per square foot (Rec., pp. 295–6); Louis P. Shoemaker, in the real-estate business both as capitalist and agent since 1876,

and who owns a valuable property quite near that in controversy, could see no money in this investment at $4.00 per square foot (Rec., pp. 296–8, 305–6); Mr. Chas. Early, quoted in the opposing brief at $5.00 per square foot, states simply that he thinks the property could have been sold at that price, " if there happened to be anybody who wanted so large a lot;" that there were comparatively few bidders at that time for such property (Rec., p. 992), and that he, himself, would not have paid $25,000.00 for the lot, unless buy it for some special purpose (Rec., p. 923); Matthew Trimble, the District Assessor, testifies that property in Washington, is assessed at about what is supposed to be its value at a forced or auction sale, and that the property in question was assessed, in 1896, lot 1, containing 991 square feet, at $3.00 per square foot; lot 2, containing 2,087 square feet, at $2.00 per square foot; lot 3, containing 1,950 square feet, at $2.00 per square foot, and lot 66, containing 1,339 square feet, at $2.25 per square foot, making an aggregate assessment of about $16,361.00 (Rec., pp. 323–4).

George E. Emmons, in the real-estate busines since 1869, and lately in charge of the real-estate business of the American Loan and Trust Co., thinks this property worth from $4.50 to $5.00 per square foot, for certain purposes, but would have hesitated to advise a purchase at the lower of these prices for investment (Rec., p. 337); Mr. Samuel Ross, who has purchased about $200,000.00 worth of real-estate in Washington, thinks the property in controversy was worth from $23,000.00 to $25,000.00 in April, 1896 (Rec., p. 341), and states that, three years ago, the property was brought to him for purchase, and was considered by him as being worth not over $25,000.00 (Rec., p. 340); W. Clarence Duvall, for twenty years a real estate dealer, considers the property in April, 1896, worth $4.50 per square foot, to a party desiring the whole ground for a

specific purpose, and that one buying on speculation would have to purchase at a lower figure to realize any profit (Rec., pp. 342–3; 941–2); J. Maury Dove purchased the southwest corner of New Hampshire Avenue and S street, containing 5,260 square feet, at $3.80 per square foot, after looking at and rejecting the property in controversy, as not being satisfactory or as desirable as the lot he purchased (Rec., p. 354–5). Clarence F. Norment, president Central National Bank, director of the American Security and Trust Co., real-estate dealer and the owner of considerable real-estate in Washington, valued the corner lot at $4.00 per square foot, and the remaining lots at from $3.25 to $3.50 per square foot (Rec., pp. 364-5); Thomas E. Waggaman, for over thirty years in the real-estate business, thought the property worth from $4.00 to $5.00 per square foot in April, 1896, (372), while Chas. G. Sloan (Rec., p. 410), John E. McLeran (Rec., p. 424), Thomas J. Owen, (Rec., p. 438), E. B. Townsend (Rec., p. 421), Walter R. Wilcox (Rec., pp. 375), and Robert I. Fleming (Rec., p. 392), concur in values ranging from $3.50 to $4.50 per square foot.

The defendant, Louis D. Wine, testifies that he thought there was probably a margin of $5,000.00 as profit on the transaction, and that his idea in making the purchase was to "make a little money on it" (Rec., p. 446). Mr. Warner (Rec., p. 531) testifies that the property was in his opinion worth between $25,000.00 and $30,000.00, and that he hesitated at first to go into the purchase, considering the margin too small on the large amount of incumbrances and the expenditure of money involved in the purchase, and that he is now convinced the price paid was too much.

The foregoing summarizes, it is believed, with entire fairness to both sides, the testimony upon the subject of values. If the case turned upon the weight of the testimony upon this question, it is respectfully submitted that that weight is with the defendants.

As stated above, however, the question is one of good faith, rather than of superior accuracy in judgment as to values.

If the theory of the complainant is correct, then had J. Maury Dove, Robert I. Fleming, Albert F. Fox, John A. Hamilton; Clarence F. Norment, Louis P. Shoemaker, Thomas E. Waggaman, or any other of the twenty-three witnesses called by the defendants, made the purchase, instead of Messrs. Warner and Wine, although there can be no question in the present attitude of the case that their testimony is unbiased and honest, yet they must have been branded as fraudulent purchasers and conspirators, because Messrs. Baumgras, Mimack, Blankman, Kent and the other witnesses for the complainant hold a higher estimate of value than they.

At page 15 of the brief for appellant, it is contended that the opinion of real-estate dealers and owners is too unreliable to be considered in this connection and that the true criterion in this case is the value Mr. Wight stated to Mr. Wine shortly after the purchase had been made, which valuation the brief states was that upon which the defendants acted. The foundation for this claim is not disclosed in the brief, nor to be found in the record. The contract of purchase was made before the interview of Mr. Wine with Mr. Wight, or the interview between Messrs. Wight and Warner.

So far from "relying" upon Mr. Wight's estimate, both defendants testify that they regarded that valuation as absurdly excessive, and that neither of them considered the property worth over $30,000.

It is deemed unnecessary, upon the state of the record in the present case, to follow the learned counsel in the citation of precedents, in which particular purchases were held to be at inadequate values. This Court in Anderson *vs.* White, 2 D. C. App., 408, decided that when property worth

$35,000.00 is sold for $20,100.00 at a deed of trust sale, the inadequacy of price is not so great as to shock the conscience or raise a suspicion of unfairness. The opinion of the learned justice below (Rec., p. 1261) cites several Maryland cases to similar effect. See, also, Eyre vs. Potter, 15 How.. 42, 60.

It is respectfully submitted upon the foregoing considerations, that the complainant's claim of fraud, collusion and bad faith, as deductions from the price paid for the property, is wholly unfounded.

II.

Surrounding Circumstances of Suspicion.

In the second place, it is claimed that the purchase of the property by Messrs. Warner and Wine was surrounded by suspicious circumstances, of a character sufficient to impeach their good faith.

These supposed circumstances of suspicion may be summarized as follows:

(*a*) That the property had been entrusted to B. H. Warner for sale at $55,000.00, and that their purchase was at $25,000.00.

(*b*) That the defendant purchasers took the title, not in their own names, but in the name of the defendant Louis W. Richardson.

(*c*) That, to the original and the first amended bills filed in the case, the defendant Richardson answered through a solicitor employed for him by Warner and Wine, not disclosing that he was a "dummy" for them, but asserting that he paid value.

(*d*) That the defendants, although entrusted by the complainant and her mother with the sale of this property at $55,000.00, did not notify them that Dutton had sold it or was offering to sell it for $25,000.00.

(e) That the sale was consummated in three days, and with the knowledge that Dutton had judgments against him in New York.

(a)

It is true that, some years before the transaction in dispute, Mrs. Godfrey had put the property in the hands of B. H. Warner & Co. for sale at $55,000.00, just as she had also placed it in the hands of numerous other real-estate agents, during the same period, for the same purpose and at the same price, among them, the complainant's witnesses Baumgras, Fitch, Deeble, Saunders, McLachlen, Wight and Robertson. The defendants had never had an offer for the property, nor had the fact that it was upon their books ever been brought to the personal attention or knowledge of Mr. Warner. The witness Dodge testifies that, when making out a new sales-bulletin sometime before the transaction in question, he wrote Mrs. Godfrey inquiring whether she desired the firm still to represent her, to which inquiry he received no answer, although the complainant testifies one was mailed to him. Whichever of these witnesses is correct in this particular, the sales-bulletin of the firm shows that the property had disappeared from their books for some months prior to the sale, and the defendant Wine testifies that he had forgotten the circumstance that it ever had been upon their books.

That the price asked was no criterion of its value was shown by the fact that, if we except the species of proposals testified to by Baumgras, no one of the numerous agents who had had it for sale ever received any offer for it, at any price, and that, with one or two exceptions, all of them agree that this asking price was grossly excessive, and that the property was incapable of sale at any such figure.

Complainant's witness Fitch, of the firm of Fitch, Fox & Brown, testified that his firm rarely considered prop-

erty as still in their hands, whether expressly withdrawn or not, after it had been with them a year or so unsold (Rec. p. 211).

The complainant, in refutation of this, offered in evidence a circular sales-bulletin of B. H. Warner & Co., which stated that property entrusted to them was considered in their hands until sold or expressly withdrawn; but the testimony in the case shows that this bulletin was issued subsequent to the time that this property was placed in their hands, and after it had disappeared from their books, being omitted from the very sales-bulletin thus offered.

(*b*)

In the second place, it is objected that placing the title in the name of the defendant Richardson was a "badge" of secrecy and fraud, notwithstanding the fact that the witnesses, on both sides, agree, without contradiction by any, that this is a usual and well-recognized practice in Washington, wherever property is bought by one or more dealers on their joint account, and especially where they are married men, having wives whose dower rights would attach, making them necessary parties to any subsequent conveyances.

This practice is testified to by Messrs. Fitch (Rec., p. 164) and Edmonston (Rec., p. 117), witnesses on behalf of the complainant, and by Messrs. Shoemaker (Rec., p. 298), Duncanson (Rec., p. 310), Norment (Rec., p. 371), and Waggaman (Rec., p. 372), and is not questioned by any witness on either side.

(*c*)

It is true that the defendants Warner and Wine provided counsel for their co-defendant and trustee Richardson, and that to the original and first amended bills in this case, simply calling for discovery as to whether there had been a

purchase for value and without notice, the answer of Richardson states that he gave value, and that he was an innocent purchaser without notice, not disclosing the fact that he was a mere trustee for his co-defendants.

The reasons for this form of answer are fully set forth in the deposition of Mr. E. H. Thomas, the solicitor in question (Rec., pp. 499–502). That there was no effort on the part of the solicitor to conceal from the complainant's counsel the real situation is further shown by the uncontradicted testimony of the same witness (Rec., pp. 503–4).

The testimony of Richardson (Rec., pp. 86–8), Wine (Rec., pp. 459–61), Warner (Rec., pp. 538–40) and Thomas, (Rc., pp. 499–502, 520–22), all four of the parties concerned, agree that this form of answer was not at the instance, or request, nor in any manner by the procurement, of the defendants Warner and Wine, but rested solely upon the judgment of the solicitor as to what was the proper form of answer to such a bill, under the rules of the court.

That no secrecy was aimed at is shown by the testimony of the witness Wight, who states that contemporancously with the purchase, and with the knowledge that he had been the agent of Mrs. Godfrey and the one most recently in communication with her, Wine told him that he had bought the property for $25,000.00, and that Warner made a similar statement to him very shortly afterwards (Rec., pp. 96–7). Complainant's witness Edson also states that Wine informed him very shortly after the transaction that he and Warner were the purchasers, and that they made no secret of it (Rec., p. 167). The testimony of the plaintiff herself shows that she first learned of the fact in question through a voluntary statement made to her representative in New York by the defendant Warner, who made no concealment of it, but readily communicated it when approached on the

subject (Rec., p. 210); while the testimony of Mr. Thomas shows that Wine and himself, also, voluntarily and fully disclosed the fact to complainant's Washington counsel before the amended bill was filed, offering at the same time, in view of the circumstances of the case, to surrender the property upon being reimbursed the amount of money they had actually advanced in the matter (Rec., pp. 503–4)—a proposition which was repeated on the record at an early stage of the testimony, and declined (Rec., p. 160).

(*d*)

In answer to her fourth objection, the testimony of the complainant's witness Wight shows that, prior to the sale, Mrs. Godfrey had communicated to him the fact that she had sold the property to Dutton, writing him, in addition, of Dutton's coming to Washington, requesting him to foster the grossly exaggerated figure at which she wrote him it had been disposed of to Dutton in the transaction, so that Dutton would not be "dissatisfied," Mr. Warner's testimony shows that, having learned, pending the transaction, that the property had at one time been on the books of his firm in the name of Mrs. Godfrey, he endeavored to ascertain her address with a view to communicating with her, and discontinued this effort only on being informed by her agent, Mr. Wight, that she had disposed of the property and had no longer any interest in it; while Mr. Wight, her most recent agent, and the one to whom she had just communicated the fact that she had disposed of the property at a valuation of $68,000.00, testified that he did not deem it necessary or important to communicate with her, although the defendants Wine and Warner informed him that Dutton was selling the property to them at $25,000.00, because she had informed him that she had disposed of the property and was no longer interested in it (Rec., p. 104).

In addition, Mr. Wine did write, contemporaneously, that the firm of B. H. Warner & Co. were the representatives of the purchaser, requesting her to forward to them the keys of the house, with which request she complied in a letter which is copied into the record, making no inquiry as to the price at which the property had been sold (Rec., pp. 14–15).

In the opposing brief, it is claimed that Mr. Wine's letter was disingenuous, in that it represented that the firm of B. H. Warner & Co. had arranged the sale for a purchaser. In this there was no misstatement. The firm of B. H. Warner & Co. was composed of B. H. Warner, Louis D. Wine, Clarence B. Rheem, and G. W. F. Swartzell. This firm, the testimony shows, took the property in charge, collected the rents, paid the interest, and otherwise represented the purchaser, or purchasers, down to the institution of the suit.

(*e*)

In reply to the fifth objection, the record shows that Mrs. Ellen S. Mussey, a member of the bar of this District, and a lady of good standing and repute, informed Messrs. Warner and Wine that the very object of Mr. Dutton in disposing of the property quickly and at a low price was in order that he might pay certain judgments which were pressing him in New York, and which were involving great sacrifices upon his part unless they were satisfied; and, further, that he came to her with a letter of recommendation from one of the best friends her husband ever had. This is corroborated by the testimony of Ezra J. Sterling, one of the complainant's witnesses, who testified that he was present when Dutton delivered this letter of recommendation to Mrs. Mussey; that it was from Mr. Twombley, a gentleman of high financial business standing in New York, and that

it was couched in terms which would naturally induce confidence.

Another ground of objection, resting upon the testimony of the witnesses Foulke, Gallivan, Warner, Wine and Rheem, is that Dutton paid one instalment of interest on the incumbrance on one of the lots in controversy accruing subsequently to the sale, namely, an instalment of interest upon the incumbrance held by the Provident Trust Co. of Philadelphia, Pennsylvania, and that the defendants Warner and Wine falsely stated, under oath in their answers, that they had paid all instalments of interests accruing after their purchase.

It is true that the defendants Warner and Wine did so state in their answers, and that they did not pay the first instalment of interest on that incumbrance accruing after their purchase, and that this instalment, which accrued in the month of May, 1896, was paid in the month of October, 1896, by the witness Gallivan for Dutton in Philadelphia.

In so far as the inaccuracy of the answer in this respect is concerned, the testimony of Messrs. Wine, Warner and Rheem show that the latter was in charge of this part of the business of B. H. Warner & Co.; that, when preparing to make their answers in response to interrogatories in regard to the payment of interest contained in the second amended bill, the defendants Warner and Wine called upon Rheem for information in that regard, and that Rheem mistakenly informed them that he had paid for them all instalments of interest accruing subsequent to the 13th day of April, 1896, the date of their purchase. Rheem states that all interest payments were made upon receipt of the notices from the holders of the incumbrances; that he paid all of these received, in this way, and that he was under the impression that all the holders of incumbrances had applied for and received their payments after April 13, 1896; that

chased, then, had any one of the twenty-three witnesses on their behalf, including a number of the most reputable and prominent real-estate dealers and property-owners in the City of Washington, become the purchasers instead of the appellees, they, too, must have been so convicted.

II.

That no one of the several surrounding circumstances relied upon to prove fraud, nor all of them together, are sufficient, especially in the light of the explanation of each of them which the testimony affords, to prove fraud, or, to employ the language of the Supreme Court in a case of this character, rise to "the dignity of a suspicion." (Smith *vs.* Gale, 144 U. S., 527.)

* * * * * * * * *

WILLIAM F. MATTINGLY,
JOSEPH J. DARLINGTON,
Solicitors for Appellants.

No. 191. Of October Term, 1901.

No. 191.

Supreme Court of the United States.
FILED
MAR 6 1902
JAMES H. McKENNEY,
Clerk

Brf. of Johnson for Appellee.

IN THE

Filed March 6, 1902.

IN EQUITY.

Brainard H. Warner and Louis D. Wine, Appellants,

vs.

Lily Alys Godfrey, Appellee.

[Record No. 17,965.]

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

JOHN G. JOHNSON,
For Appellee.

IN THE SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

Brainard H. Warner and Louis D. Wine, Appellants,

vs.

Lily Alys Godfrey, Appellee.

October Term, 1901.

No. 191.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

On the twenty-sixth day of March, 1896, Mary Alys Godfrey, mother of the appellee, who held in trust for the latter the legal title to lots 1, 2, 3 and 66 in square 134, and lot 40 in square 92 in the city of Washington, conveyed the same, subject to loans amounting to about $17,500, to one Stephen A. Dutton, for an expressed consideration of $65,000. This consideration was paid by a conveyance by Dutton of a certain wharf property in the city of New York. No title to the property thus conveyed was vested in Dutton, and the conveyance to him, obtained by his fraudulent representations concerning it, was a fraud upon the appellee.

Dutton employed a Mrs. Mussey, a practicing attorney in Washington, to sell for him the four lots in square 134.

On the tenth day of April, 1896, in pursuance of this employment, she called upon Mr. B. H. Warner, of the firm of B. H. Warner & Co., real estate agents in Washington, and asked Mr. Warner, whom she saw, to sell the property, stating that the owner would take $25,000 for the same. This offer was so tempting, that within a few hours, on the same day, two members of the firm, Warner and Wine, agreed amongst themselves to purchase the property for their own account. They prepared, on that day, and sent to Mrs. Mussey, a contract of sale to one L. W. Richardson, a young man, who was related to Wine, it having been understood, with Mrs. Mussey, that a commission of three per cent. would be paid, which would be divided, in the proportion of one-third to her, and two-thirds to B. H. Warner & Co.

This contract was executed by Dutton and by Richardson. The matter was so hurried, that the conveyance, by Dutton, was delivered, and settlement was made, on the thirteenth day of April, 1896. The amount due to Dutton, less the commission of three per cent., which was divided in the proportions agreed upon, was paid. The deed to Richardson was at once entered of record.

On the seventeenth day of April, 1896, B. H. Warner & Co. wrote to Mrs. Godfrey stating that a client of theirs had recently purchased the premises in question and asked her for the keys. These were sent, on the eighteenth day of April, 1896.

In July, 1896, or thereabouts, the appellee ascertained the fraud which had been practiced upon her by Dutton, in connection with the property which had been conveyed to her. Thereupon Dutton was indicted for the crime he had committed, and, in due course, he was convicted and sentenced.

In September, 1896, with no other knowledge than that Dutton had perpetrated a gross fraud upon her, and that the title to the lots in square 134 had been conveyed to Louis W. Richardson, a bill in equity was filed in the Su-

preme Court of the District of Columbia, by the appellee, against Dutton, his wife and Louis W. Richardson. This bill averred the facts which had occurred, as they were then understood, and the belief of the plaintiff that Richardson had parted with no valuable consideration for the lots conveyed to him. It prayed a decree of reconveyance.

Default was made by Dutton. It was thereupon ordered that lot 40 in square 92 should be reconveyed to the appellee.

Richardson, however, filed an answer to the bill, in which he averred he had purchased the premises in question, through B. H. Warner & Co., real estate brokers, after the same had been offered to said firm for sale at $25,000.

Simultaneously with the deed to him, Richardson executed a declaration, which was not recorded, that he held the premises in trust for Warner and Wine, who had paid the whole consideration money, upwards of about $7500.

In May, 1897, the amended bill was filed, in which it was averred that Richardson was only a nominal party to the transaction, and that the real parties were Dutton on the one part and Warner and Wine on the other.

On the seventeenth day of July, 1897, a more formal amended and supplemental bill was filed, in which the facts as they had then become known to the complainant, were stated more specifically.

In his earlier answers, Richardson claimed to have purchased the property upon his own account. In the course of the later proceedings, Warner and Wine admitted the property had been purchased in his name, for their benefit.

An immense body of testimony was taken as to the real value of the property and as to the circumstances of suspicion connected with the transaction, known to Warner and Wine, charging them with notice that a fraud of some kind, had been perpetrated.

Some of the expert witnesses testified that the property which was sold for $25,000, was worth upwards of $50,000. Other witnesses called for the defendant swore it was not worth much beyond $30,000 or $35,000.

The case was tried in the Supreme Court of the District

of Columbia, and a decree was entered dismissing the bill. An opinion was delivered by Associate Justice Hagner, elaborate and able, in which he found that the value paid by Warner and Wine was not grossly insufficient, and that they had no knowledge of circumstances of fraud or of suspicion, such as deprived them of the protection of *bona fide* holders for value without notice. It did appear, however, that the firm of B. H. Warner & Co., until within a very few months prior to the conveyance to Dutton, had had the premises in their hands as real estate agents for sale at the price of $55,000.

The case was appealed to the Court of Appeals of the District of Columbia. The opinion was there delivered by Mr. Justice Shepard, substantially affirming the findings of fact in the lower court, but holding Warner and Wine guilty of constructive fraud in having purchased from Dutton, for their own account, property they had professed to sell, acting as his agents, for an agreed-upon compensation, to a third person. The Court of Appeals held that inasmuch as Dutton, by reason of the fraud he had perpetrated, held the title as trustee for the appellee, the purchase for their own account of what they sold as his agents, was defeasible by the appellee, the owner of the equitable title. In other words, the Court of Appeals held that the appellee, the owner of an equitable title held by Dutton as a fraudulent trustee, was entitled to avoid a purchase of the title made by his agents in the name of a third person, but in fact upon their own account and for their own benefit.

The Court of Appeals allowed an amendment to be filed, which claimed, on behalf of the appellee, the right to avoid the title of the agents who had acted fraudulently. This amendment was filed. Warner and Wine made answer thereto. The case was referred to an Auditor to find the amount of outlays which had been made by Warner and Wine, in and about the purchase of the property. The Auditor (Record, page 587) reported the amount of such outlays with interest to be $10,455.28.

It was thereupon decreed, exceptions to the Auditor's

report having been dismissed, that Warner and Wine should convey to the appellee the four lots in question, upon payment of said sum of $10,455.28. From this decree Warner and Wine appealed to this court. Having as yet been favored with no brief filed by their counsel, it is necessary to deal with the question by way of anticipation of what may be said.

ARGUMENT.

We will discuss what suggests itself to us in this case under four propositions:—

I. WARNER AND WINE, ACTING AS AGENTS FOR THE SALE OF DUTTON'S PROPERTY, PURCHASED THE SAME WITHOUT THE KNOWLEDGE OF DUTTON FOR THEIR OWN BENEFIT, IN THE NAME OF RICHARDSON, WHOM THEY REPRESENTED TO BE THE REAL PURCHASER.

II. THE PURCHASE BY THE AGENTS FOR THE SALE, WARNER AND WINE, IN THE NAME OF A THIRD PERSON FOR THEIR OWN BENEFIT, WAS A FRAUD UPON DUTTON, SUCH AS ENTITLED HIM TO A RECONVEYANCE UPON REIMBURSEMENT OF THE AGENTS' EXPENSES.

III. THE APPELLEE, AS EQUITABLE OWNER OF THE PROPERTY WHICH STOOD IN THE NAME OF DUTTON, WAS CLOTHED WITH THE RIGHT TO DEMAND A RECONVEYANCE OF THE PREMISES SECRETLY PURCHASED BY THE SELLING AGENTS IN THE NAME OF A THIRD PERSON FOR THEIR OWN BENEFIT.

IV. NOTHING APPEARED IN THE PROCEEDINGS WHICH BARRED THE RIGHT TO A DECREE SUCH AS WAS ULTIMATELY ENTERED.

I. Warner and Wine, acting as agents for the sale of Dutton's property, purchased the same without the knowledge of Dutton for their own benefit in the name of Richardson, whom they represented to be the real purchaser.

The agreement between Dutton and Richardson, dated 10th April, 1896, (Record, page 19), conclusively establishes the relations of the parties. The name of Dutton was not filled in the body thereof, as the party of the first part; but Mrs. Mussey sent the contract to him for execution and by him it was executed. The contract is between Dutton and Richardson, the former agreeing, in consideration of the sum of $500 paid to B. H. Warner & Co., "agents of the parties of the first part," as a deposit, to convey the lots in question for $7500 in cash, subject to the encumbrances.

The real purchasers were two members of the agents' firm—Warner and Wine. A third member, Rheem, witnessed the signature of Richardson.

Not only did the firm of B. H. Warner & Co. appear as agents of Dutton in the contract, but they were actually paid two-thirds of the commission allowed to the agents for making the sale.

Mrs. Mussey was called by the appellants as a witness. Her testimony is to be found in the Record, pages 379, 400 and 430. She testified (Record, page 380) that she had been authorized by Dutton to raise money upon the property, and swore further:—

> "I finally, as there was haste required, went to the "office of Messrs. Warner and Wine, knowing them "to be large dealers who usually had clients with "money to invest in promising real estate. I met "in that office Mr. Wine and, I believe, Mr. Warner, "but my business that morning was done entirely "with Mr. Wine. I stated to him that I had a client "who was forced to sell his property to raise money, "and that if no better could be done I would dis- "pose of it for him; I thought at least he would dis- "pose of it for the net sum of $25,000. I asked "Mr. Wine if, in his opinion, a larger sum could "be raised on it within a day or so. He said he did "not think it could. He then looked at the property "on the map, I pointing out those four lots to him. "I returned to my office, and I think it was in the

"evening of the same day that Mr. Wine came to me "with a contract or option for the sale of that prop- "erty at $25,000, reciting a deposit of $500 and giv- "ing fifteen days to complete the sale. I told him "that we would not sell the property on that length "of time; that it would be either sold in three or "four days at that price or not at all, and he changed "it to five days, as I remember, and left the paper "with me for the signature of Mr. Dutton. Mr. "Dutton came to my office that same evening, and, "after a conversation with him, he signed the paper "for the sale of the property, and I delivered it to "Mr. Wine. The next day I went to Mr. Warner "and Mr. Wine to see when they would complete "the purchase, as it had been understood they would "do that on Saturday. Mr. Warner said, 'I see that " 'that property had been conveyed on the record " 'to Mr. Dutton.' I said, 'Yes; he is my client, and " 'that is the person from whom you will purchase " 'the property, and I want to close it up to-day.' "Mr. Warner said they could not do it for a few days. "I said then we would not do it at all, for it would "be a sale now or not at all; that he must have the "money. I went back and had a conversation with "Mr. Czaki, stating to him that it was understood "that I would have some money for him on Mon- "day. On Monday Mr. Dutton and his wife ap- "peared in my office; also Mr. Czaki. Mr. Dutton "and Mrs. Dutton and myself went to the office of "the Columbia Title Company, and there the papers "were executed for the sale of the property. Mr. "Wine was introduced by me to my client Dut- "ton, and his wife, and after a brief consultation "he returned and Mr. Edmondson completed the "transaction. In the afternoon the deed was de- "livered to Mr. Edmondson, and Mr. Edmondson "made out a statement and delivered the checks "for the net amount of the sale, after the deduction "of accrued interest and taxes, to Mr. Dutton. Mr.

"Dutton indorsed those checks and handed two of "them to me, one for $300 and something for my "bill and expenses, and one for $250, my share of "the commissions for the sale of the property. He "handed one of those checks for $500 for the com-"mission of Messrs. Warner and Wine to Mr. Ed-"mondson, and the other checks he took over to the "Columbia National Bank, on which they were "drawn, and there I identified him as Stephen A. "Dutton, and he received the cash for them. I re-"turned to my office after having deposited my "checks in the Second National Bank and met Mr. "Dutton as he was going down the stairs, and he "stated to me that he would leave for New York on "the next train. That is the last time I saw Mr. "Dutton."

It thus appears that no statement was made to Dutton, other than that which appeared upon the face of the contract, viz., that B. H. Warner & Co. were his agents, and that the purchase was by a third person, Richardson. The payment of B. H. Warner & Co.'s share of the commission, viz., $500, by a check to their order, established beyond doubt their relation as agents.

Mrs. Mussey (Record, page 431) further testified:—

"Q. Had Mr. Wine told you, at your interview "with him on the morning of 10th of April, 1896, "that he would bring you around this contract of "sale? A. He did not. Q. Had an oral agreement "been made in the morning for the sale of that prop-"erty when you saw Mr. Warner and Mr. Wine, or "was this instrument your first knowledge that your "proposition was accepted? A. That was the first "knowledge I had of it. Q. And that was within a "few hours after you had held your first interview "with Mr. Warner and Mr. Wine at their office? A. "My interview was with them in the morning, and "this was in the afternoon. Q. Did you consider "that a pretty quick sale for a dull market? A. I

"did. * * * Q. I will read you the following "questions propounded to Mr. Wine in the bill of "discovery here and his answer thereto, and ask you "whether he is correct or not in his statement, ac- "cording to your recollection of the fact: 'Did you "disclose to Mrs. Mussey at the time of said trans- "action, to wit, in April, 1896, that Louis Wine "Richardson was merely a dummy, and that you and "your partners were the real purchasers? A. I said "nothing to Mrs. Mussey upon the subject of Louis "Wine Richardson's connection with the matter.' "A. I think that is correct. Q. When did you "first learn that Mr. Richardson was only a dummy, "in whose name the title was taken? A. It was "several months after that. Q. Can you state more "definitely exactly the time when you first learned "that Mr. Richardson was a dummy in that trans- "action and not the real purchaser of the property? "A. It was some time, I think, in the following Fall "or Autumn, but when I do not remember."

On the 17th of April, 1896 (Record, page 14), B. H. Warner & Co. wrote to Mrs. Godfrey, saying:—

"A client of ours has recently purchased premises "known as 1801 Q. Street, N. W., this City from "Mr. Dutton."

Wine (Record, page 444), thus testified:—

"A. About half-past ten o'clock on the morning "of the 10th of April, 1896, Mrs. Ellen S. Mussey "came in our place and offered for sale lots 1, 2, 3 "and 66 of square 134 for the sum of $25,000, agree- "ing if the sale were made that a commission of "three per cent would be allowed, one-third of which "she would want for herself. She also stated that "$7500 cash would be required and an assumption "of $17,500 trust. I took the matter under consid- "eration until about two o'clock in the day trying "to think of some one who might be a possible pur-

"chaser for the property. I could not think of any "one, and about that time in the day I determined "to buy the property myself. In the meantime I "had talked with Mr. Swartzell and Mr. Warner "about it, and Mr. Swartzell had promised to go in "partnership with me to buy it in the event Mr. "Warner did not. I had not talked with him about "it until that time. At two o'clock my nephew, "Louis Wine Richardson, was in the office, and I "drew up a contract for the purchase of the property, "which I believe is on file here, acknowledging re- "ceipt of $500 from Mr. Richardson as a deposit on "this property, setting forth in the contract how it "was to be settled. Louis Richardson signed this "contract, which was witnessed by Mr. C. B. Rheem. "I either took or sent that contract to Mrs. Mussey; "I do not remember which now. At any rate I left "it with her. About four o'clock in the afternoon "Mrs. Mussey sent the contract back to me just "as I had made it out, with one exception; that ex- "ception was that the fifteen days allowed for settle- "ment had been erased and five days inserted."

Warner testified (Record, page 529):—

"Q. Now, please tell us the whole of your connec- "tion with the purchase of the property which is in- "volved in this suit, located at Q Street and New "Hampshire Avenue. A. Mrs. Mussey came to the "office of B. H. Warner & Co., I think, on the morn- "ing of April 10th, 1896. I was busy and with some "one in my back office, and I turned her over to Mr. "Wine. A few moments afterwards he told me she "had offered the property involved in this contro- "versy for sale, and asked me to look at the lots on "the plat book, which I did. He told me she would "take $25,000 for the property, less a commission "of three per cent."

We submit that the fact of an employment of B. H. Warner & Co. as agents to sell, of the payment to them

of a commission for their services as such, of a secret purchase by them for their own benefit in the name of an ostensible third person is conclusively established by the record. This being so, we have an ordinary case of an abuse of trust by an agent, who deceives his principal into the belief he has sold to another person, at a time when he has actually bought for himself.

II. The purchase by the agents for the sale, Warner and Wine, in the name of a third person for their own benefit, was a fraud upon Dutton such as entitled him to a reconveyance upon reimbursement of the agent's expenses.

The proposition which we have stated is so elementary that it would be an insult to attempt to elaborate the same.

No agent can take advantage of his agency to secure for himself a secret benefit. Were it permitted to real estate agents to purchase for themselves, the property intrusted to their care to sell, there would be an end of any ability on the part of the owners to secure fair dealing. It is immaterial that the price, $25,000, named by Mrs. Mussey, was paid. A vender may be willing to sell for a certain sum in the belief that his agents have sold to a third person, but be unwilling to sell if advised of the fact that they are buying for themselves.

III. The appellee, as equitable owner of the property which stood in the name of Dutton, was clothed with the right to demand a reconveyance of the premises secretly purchased by the selling agents in the name of a third person for their own benefit.

The appellee was deprived of her property by a fraud. The conveyance to Dutton, resulting from his fraud, was one which vested in him the legal title as a trustee *ex maleficio* of the grantor.

If A., holding title as trustee of B., is defrauded by an agent in whose hands he places the property for sale, there can be no doubt as to his duty to avoid the transaction, if

such avoidance be for the benefit of the *cestuis que trustent*. Should the trustee fail to perform his duty, a court of equity would compel such performance, for the benefit of the *cestuis que trustent*.

Apart from this elementary principle, the *cestuis que trustent* would be entitled to a reconveyance because of the fact of the agent who had acted fraudulently being not entitled to the protection accorded to a *bona fide* purchaser.

The appellee was entitled to a decree of reconveyance by reason of Dutton's fraud, unless Warner and Wine held the title under such circumstances as gave to them, in equity, the better right.

Upon examination, it was ascertained they held a defeasible title, subject to revocation upon the return to them of the outlays they had made.

How could they assert this defeasible title against the equity of the appellee?

IV. Nothing appeared in the proceedings which barred the right to a decree such as was ultimately entered.

The appellants claimed that at one stage of the proceedings they had expressed a willingness to reconvey to the appellee, upon reimbursement of their outlays. It does not appear what amount they claimed to have expended, and in view of the fact that in the proceedings before the Auditor in the Court of Appeals they claimed a much larger amount than was allowed, it is probable there would have been no agreement as to the actual amount to which they were entitled.

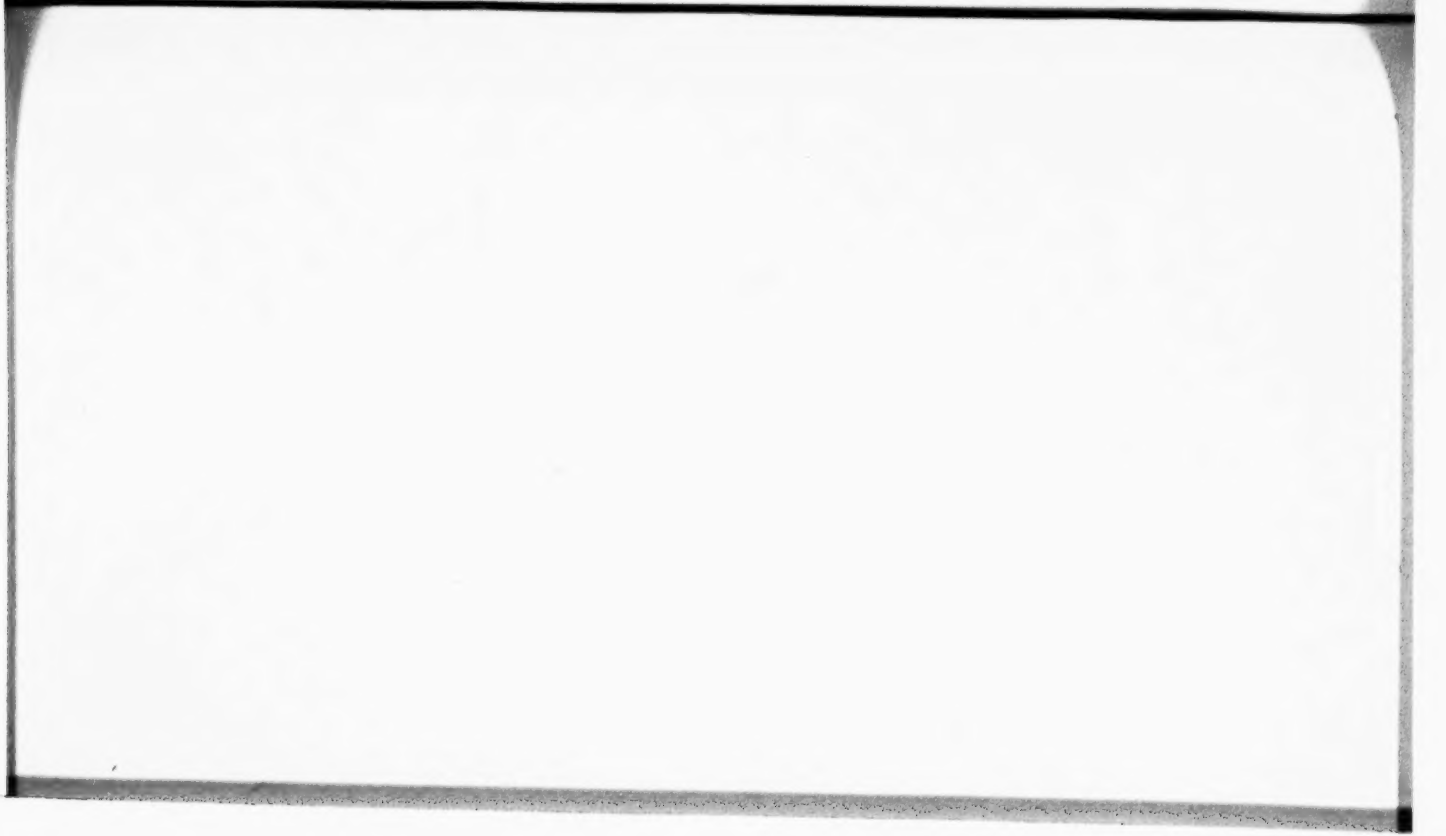
This willingness, however, was not put into the shape of any actual tender. It was made at a time when the appellee was ignorant of many of the important facts. The conveyance had been made to Warner and Wine in such haste and under such circumstances as properly grounded a suspicion of bad faith.

We submit that a person ignorant of important facts,

and justly suspicious as to what has occurred, is not prevented from insisting upon a conveyance to her upon terms of reimbursement of the expenditures of those who hold a title in which she is interested, because she had not acted instantly upon an expression of willingness to convey.

It has also been suggested by the appellants that the Court of Appeals had no right to rest a decree upon a point of law which had not been previously made. There is no merit in this suggestion. The appellee was claiming she had been defrauded of her property by Dutton and that she was entitled to a reconveyance. In the course of the proceedings the whole transaction was developed. It was quite within the power of the court, upon the facts disclosed, to decree the reconveyance demanded, upon any equitable ground developed. It is not for the appellants to complain that in the decree entered they were allowed reimbursement for their expenses.

JOHN G. JOHNSON,
For Appellee.



Office Supreme Court U.S.
FILED
MAR 14 1902
JAMES H. McKENNEY
Clerk

No. 191.

Reply Brf. of Johnson for Appellee

Filed Mar. 14, 1902.

IN THE SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

Brainard H. Warner et al., *Appellants*, vs. *Lily Alys Godfrey, Appellee.*	Of October Term, 1901. No. 191.

APPEAL FROM COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APPELLEE'S REPLY TO APPELLANTS' BRIEF.

Owing to the late receipt of the brief of appellants, it is impossible to do more by way of reply than briefly to suggest a few thoughts.

It is devoted mainly to discussing three points: (1) a denial that appellants were the agents of Dutton; (2) a complaint that they were improperly refused an opportunity, after the amendment of the bill, to reopen the case; and (3) an objection to the disallowance of the amounts paid by them as expenses of litigation, including counsel fees, and of interest upon their advances. Under three heads we will briefly discuss these points:—

I. The evidence established the relation of principal and agent as between Dutton and the appellants.

Having in our preliminary brief quoted extensively from the testimony which established this relation, we do not deem it necessary to add much under this head.

It is not pretended the appellants ever explained to Dutton they were not his agents. The testimony of Mrs. Mussey, called by the appellants, shows conclusively they were not applied to, by her, to buy the property either for themselves or acting as agent for a client. She testified (Record 380), after referring to her interview with Messrs. Wine & Warner, when she first called upon them:—

> "I stated to him that I had a client who was forced to sell his property to raise money, and that if no better could be done I would dispose of it for him, I thought, at least he would dispose of it for the net sum of $25,000. I asked Mr. Wine if, in his opinion, a larger sum could be raised on it within a day or so. He said he did not think it could. * * * I returned to my office, and I think it was in the evening of the same day that Mr. Wine came to me with a contract or option for the sale of that property at $25,000, reciting a deposit of $500, and giving fifteen days to complete the sale."

Speaking of the settlement and of what was done by Dutton, she said:—

> "He handed one of those checks for $500 for the commission of Messrs. Warner and Wine to Mr. Edmondson, and the other checks he took, &c."

She further testified (Record 382):—

> "Q. When you went to Warner & Co., and offered the property for $25,000, what was said at the time about commissions? A. I arranged with them that I should have one-third of the commissions."

An agreement was presented to Dutton for his signature by the appellants, who, in their hurry to secure the property at a bargain, had not then heard his name. A blank for the name was therefore left. The agreement made the vendor (name in blank), however, a party of the first part, and Richardson, who was really not the purchaser, but the go-between of the appellants, a party of the second part. It recited that in consideration of the sum $500 paid to the party of the first part's "agents, B. H. Warner & Co., as a de-"posit," Dutton agreed, at a designated price, to sell to Richardson.

No actual payment of $500 was made either to Dutton or Mussey, though the agreement recited that as earnest money it had been paid by the vendee to the agents of the vendor. As this money was not received by Dutton, but was received, as the contract stated, by B. H. Warner & Co., its receipt could have been by them in no other capacity than as agents of vendor. Had they been supposed to be acting as agents for Richardson, compelled to pay $500 on account, they would not have been made the depositaries of the earnest money. It would have been anomalous had Richardson secured his completion of his contract by making deposit with his own agents. A payment to be made to the vendor and recited to have been made, could have been made only as was stated in the agreement, viz., to B. H. Warner & Co. as agents of the vendor.

We have a contract, signed by Dutton, stating upon its face that B. H. Warner & Co. were acting as his agents, which recited their receipt, as such agents, of the earnest money the purchasers were bound to pay to him, directly, or to some one acting on his behalf. We have a positive statement in said contract that Richardson was the purchaser. Superadded to this is the uncontradicted statement by Mrs. Mussey, that the agents' commissions for making sale were to be divided between herself and B. H. Warner & Co. We have the fact of the actual payment of commissions to B. H. Warner & Co. by Dutton, who would have known, if the firm was acting as agents of the purchaser, that they would

not, and could not, receive a commission from the vendor. Further, we have the uncontradicted statement of Mrs. Mussey, that in the beginning of her interview with one of the firm, she asked his opinion whether a larger sum than $25,000 could be obtained and his statement that he did not think it could. It is impossible that she would have taken the judgment of the agent of the purchasers as to what would be likely to be obtained in the way of a price.

We therefore submit, with great confidence, that the Court of Appeals was right in finding the appellants were supposed by Dutton to be acting as his agents, for a compensation agreed to be, and actually, paid to them by him.

II. The allowance of the amendment gave no opportunity to the appellants to reopen the case.

The amendment introduced into the controversy no new matter. Every party who knew anything concerning the relations of the parties, had been examined and cross-examined, at the greatest length. Warner, Wine, Richardson, Mrs. Mussey, and all other persons acquainted with the circumstances connected with the position of B. H. Warner & Co., had testified fully and exhaustively. All the appellants had filed answers stating their position in detail. The sole purpose of allowing the amendment was to make the allegation correspond with the proofs and with the modified relief to which, upon the proofs, the appellee was entitled.

The relations between the parties, and all the testimony connected therewith had been necessarily elicited under the issues made by bill and amended bills and answers and amended answers, as the same were of record when the Court of Appeals dealt with the matter. There is no question that any additional evidence existed, or could be produced.

The Court of Appeals found the fact of the agency upon consideration of the contract between Dutton and Richardson, and of the voluminous testimony which had been given by all the parties who had participated in the transaction.

We submit that the amendment was not necessary. It was within the power of the Court of Appeals, upon the pleadings and proofs, to have entered its decree. It preferred, however, that there should be a formal amendment by the appellee in which she would tender her readiness and willingness "to pay "to the defendants or any of them, upon a reconveyance to "her of said premises, such sum, if any, as the court may "find to have been paid by them or any of them on account "of said property, and which should in equity and good con- "science be repaid them by her."

Antecedently to filing this amendment, she had made no formal tender of her willingness in this respect. After the amendment she was bound by her tender and was precluded from claiming a reconveyance without reimbursement of expenses. Her tender, however, did not reopen the case, nor did it make such reopening necessary. The Court of Appeals expressed no intention that additional testimony should be taken.

From the beginning, the appellee demanded a reconveyance of the premises of which Dutton had defrauded her. Such was her original prayer for relief. Under the supposition that Richardson alone was interested in the conveyance the original bill was filed against him. When the interest of Warner and Wine was subsequently disclosed, it was amended, by including them as parties defendant. In every pleading the appellants filed, they maintained their right to insist upon a retention of the property. Whilst the appellee did not tender reimbursement of expenses, she asserted at all times a right the appellants denied, viz., the right to a reconveyance. The testimony under this issue developed every fact and circumstance relevant to such an issue. The amendment introduced no new matter. As we have said, it admitted a duty to reimburse actual expenditures in and about the property. Thereupon, the court decreed what the appellants had always in their pleadings refused, viz., a reconveyance, but upon the terms of making the then tendered reimbursement.

III. The circumstances antecedently to the filing of the amendment were not such as made it necessary to reimburse appellant for the expenses of the litigation, including their counsel fees; nor to pay them interest upon their expenditures in and about the property.

The appellants suggest that in an interview with the late Judge Wilson which took place many months after issue had been joined between themselves and the appellee, there was an offer by their cousel to Judge Wilson, to reconvey the premises upon terms of reimbursement of expenses. The evidence of this offer rests upon the testimony of Mr. Thomas (Record, 503). He said, *inter alia*:—

> "I told Judge Wilson that I thought it was a case where the complainant had probably been imposed upon by Dutton, and where Mr. Warner had made the purchase that he did in the utmost good faith. It was simply a question of two innocent parties, which one should suffer—that was all—and that I would advise Mr. Warner to take back the money that he had expended in the transaction, provided the counsel fees for Mr. Warner and Mr. Richardson were paid. Judge Wilson stated on several occasions that he was satisfied the parties would not pay counsel fees; that it was a case that he thought he could settle on the conditions that I mentioned to him."

At a later stage of the proceedings, a further suggestion was made, of willingness to reconvey upon reimbursement of expenses; but there was no formal tender. The pleadings never disclosed any willingness to reconvey.

We submit that the tender claimed to have been made was not an offer such as, under any circumstances, the appellee was bound to accept. There was no statement as to the amount of counsel fees which had been paid by the appellants during the course of the prior litigation. It was no part of the duty of the appellee to reimburse the same.

To entitle the appellants to maintain the position of having

tendered at an early stage of the proceedings all the relief to which the appellee was entitled, it would have been their duty to make formal tender of a reconveyance, and to have made this without illegal exactions. At no time did the appellants offer to reconvey, unless reimbursed their counsel fees. No specific amount of expenses was named. There was nothing but a most general reference concerning the same, with a demand for counsel fees.

We submit, however, that even had there been a formal tender of reconveyance without insisting upon reimbursement of what had been paid for counsel fees, the appellee would have been justified in refusing to accept it, without being barred of her right to relief, saving upon the terms now suggested, viz., reimbursement of all the expenses of litigation. The conduct of the appellants had been most suspicious. They had acted with undue haste in pushing to a contract of sale and to a conveyance, for a consideration of $25,000, property which had been carried upon their books as agents for its sale, until a very short time antecedently, at $55,000. They had taken title not in their own name, but in that of a third person who had no interest therein. The pretext for this concealment was insufficient, viz., a desire to avoid the trouble of obtaining a joinder, in subsequent conveyances, of the wives of the real purchasers. If Richardson was married, it would have been necessary to have obtained a joinder of his wife. The reason alleged for not taking title in the name of the real purchasers borders upon the fraudulent.

In the belief that Richardson was the real grantee the original bill was filed. The answer thereto was prepared by counsel under the directions of Richardson and of at least one of the appellants. It is asserted by the gentleman who testified to the tender that the purpose of the answer was merely to set up "*bona fides*." If such was the purpose, the performance was most defective. The answer averred what was absolutely untrue, as appears from the following quotations (Record, pages 12, 13, 14) therefrom:—

> "This defendant denies the allegations of said paragraph that he parted with no valuable consideration for said

lots; that he is not an innocent holder for value, and that he has no interest, legal or equitable, in said property. This defendant denies that allegation of said paragraph that the transaction between said Stephen A. Dutton and Cora M. Dutton and this defendant was without consideration and said deed fraudulent. * * * *

"This defendant, further answering, says that he made said purchase through B. H. Warner & Co., real estate brokers; that about the tenth day of April, 1896, Ellen C. Mussey, a member of the bar of this Honorable Court, in good standing, acting for and on behalf of the said Stephen A. Dutton, offered the said real estate to his said agents for sale at and for the sum of twenty-five thousand ($25,000) dollars; that the said attorney and said Stephen A. Dutton represented to said agents that the said Stephen A. Dutton was then *bona fide* owner of said property, and desired to sell the same and realize upon the equity therein in order to use the proceeds to redeem certain valuable securities belonging to him held as collateral. Nothing was said or intimated by said Dutton or his attorney in reference to the complainant or any transaction whatever with her. This defendant through his said agents, believing the said representation and that the said Stephen A. Dutton was the actual owner of the said property which he proposed to sell, thereupon entered into the contract a copy of which is herewith filed, marked 'Exhibit L. W. R. No. 1,' and is prayed to be considered a part hereof."

Further, the answer avers, that after the Title Insurance Company had reported upon the death, "the said firm of "B. H. Warner & Co., for and on behalf of the defendant, in "good faith, in the usual course of the business," &c., deposited cash, &c.; "that upon the delivery of the said deed conveying "said property to him as aforesaid, the possession thereof was "given to this defendant through his said agents B. H. Warner "& Co., with the knowledge and consent of the complainant," &c.; that desiring the keys of the property the said B. H.

Warner & Co., "acting for and on behalf of this defendant "wrote and duly mailed and posted a letter to complainant's "mother"; and that the complainant thereupon "sent and de- "livered said keys to said B. H. Warner & Co., agents of this "defendant."

We submit that no possible justification can be found for the repeated averments, under oath, in the answer, that the defendant Richardson had really purchased the properties and that B. H. Warner & Co. had acted as his agents in making such purchase.

Being thus furnished, at the the outset of the litigation, with an answer which falsely stated the relations of Richardson to the property and being apprised of other most suspicious circumstances, the appellee was not bound, under a penalty, to accept even a complete, much less an insufficient, offer of relief, made informally to her counsel.

The appellants persisted in maintaing their right to the property in all their answers. The litigation was conducted, as the record shows, upon the basis of their assertion of their right to retain the same. How, then, could the court have directed, in addition to reimbursement of the expenses actually paid in the acquisition of the property and in the carrying of the same, that they were entitled to reimbursement of the expenses of the litigation they thus conducted for years?

Costs, as between solicitor and client, are awarded only under most extreme circumstances, against a third party. There is nothing in this case to justify compelling a litigant to pay not only her own expenses, but those of her adversary, incurred in a long-continued effort to retain from her a property to which she was found entitled.

Interest is not a right. Every expenditure made in and about the acquisition of the property, removal of incumbrances, and the care thereof, was reimbursed. Interest was not allowed because it was no part of the expenditure. Failure by the appellee to reimburse the expenditures during the period in which the appellants insisted upon retaining the title, was of course justifiable.

JOHN G. JOHNSON,
For Appellee.

Supreme Court of the United States.

No. 191.—October Term, 1901.

Brainard H. Warner and Louis D. Wine, Appellants, *vs.* Lily Alys Godfrey. } Appeal from the Court of Appeals of the District of Columbia.

[June 2, 1902.]

On September 1, 1896, Lily Alys Godfrey, appellee herein, filed a bill in the Supreme Court of the District of Columbia, sitting in equity, to establish her title to five lots of land situated in the city of Washington, of which it was asserted she had been defrauded by one Stephen A. Dutton.

The defendants to the bill were Dutton and wife, Louis W. Richardson, Fred M. Czaki and Mary Alice Godfrey (mother of complainant). Omitting averments relating to real estate other than that now in controversy, it suffices to say that the bill detailed grossly fraudulent and criminal practices, by which Dutton, without consideration, on or about March 26, 1896, obtained the title to a large amount of real estate, the property of the complainant, including that now in controversy, that is, lots 1, 2, 3 and 66, in a subdivision of block 134, in the city of Washington. It was averred that by a deed recorded April 13, 1896, Dutton and his wife conveyed, without consideration and fraudulently, the lots in question to the defendant Richardson. The latter answered the bill on December 1, 1896, and averred that he was a *bona fide* purchaser of the property, without notice, actual or constructive, of any equity of the complainant; that, through his brokers or agents, B. H. Warner & Co., he had paid full consideration to Dutton for the property, and he annexed to the answer, as a part thereof, the contract of purchase from Dutton, a copy of which is in the margin.*

* Brainard H. Warner. Louis D. Wine.
Geo. W. F. Swartzell. Clarence B. Rheem.

Office of B. H. Warner & Co., 916 F. St. N. W., Washington, D. C.

Articles of agreement, made and entered into this 10th day of April, A. D. one thousand eight hundred and ninety-six, by and between —— ——, party of the first part, and Louis W. Richardson, party of the second part, in manner and form following: The said party of the first part in consideration of the sum of five hundred (500) dollars to his agents, B. H. Warner & Co., duly paid as a deposit, the re-

On March 28, 1897, a decree *pro confesso* was entered as to one of the lots of land affected by the bill, which is not involved in this controversy, and title to which remained in Dutton. By the decree the legal title to said lot was established in the complainant.

By an amended bill filed on May 1, 1897, Warner and Wine were made defendants to the cause. The amendment added to the clause in the original bill, which charged that the conveyance to Richardson was without consideration, the following:

"That the said Richardson was only a nominal party to the said transaction; the real parties were the said Dutton, on the one part, and Brainard H. Warner and Louis D. Wine, on the other; that the said Wine and Warner pretend that they advanced or furnished to the said Dutton the sum of six thousand five hundred and eighty-six and $\frac{33}{100}$ ($6,586.33) dollars, and took from the said Dutton the said conveyance to the said Richardson to secure the repayment of the said sum so claimed to have been advanced. Whether said Warner and Wine actually furnished said Dutton such sum or any sum whatsoever the complainant cannot affirm or deny, and demands strict proof in that behalf, and she avers that the said Warner and Wine had such notice of the frauds of the said Dut-

---

ceipt whereof is hereby acknowledged, hereby agrees to sell unto the party of the second part, the following-described real estate in the city of Washington and District of Columbia: Lots 66, 1, 2 and 3, square 134, Washington, D. C.

For the sum of twenty-five thousand (25,000) dollars, which the said party of the second part agrees to pay to the said party of the first part as follows:

Seventy-five hundred (7,500) cash, balance seventeen thousand five hundred (17,500) to be assumed, secured by deed of trust on the said described property, with interest at the rate of six per cent per annum, payable ——, which amount is now upon the property and secured by a trust or trusts, and the said party of the first part, on receiving such payment at the time and in the manner above mentioned, shall execute, acknowledge and deliver to the said party of the second part, or to his heirs as assigns, a special warranty deed and conveyance, assuring to them the fee simple of the said premises free from all incumbrances, except as to the trust referred to above, which deed shall contain the usual full covenants. The terms of sale to be complied with in five days from the date hereof, and said deposit to be applied in part payment of the purchase of the said described real estate. Title to be good and marketable or deposit returned.

And it is understood that the stipulations aforsaid shall apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In witness whereof the parties to these presents have hereunto set their hands and seals the above day and date.

(Signed) S. A. DUTTON. [SEAL.]
(Signed) L. W. RICHARDSON. [SEAL.]

Signed, sealed, and delived in the presence of—
(Signed) ELLEN S. MUSSEY,
As to S. A. Dutton.
(Signed) C. B. RHEEM,
As to L. W. Richardson."

ton as herein set forth, and of such facts and circumstances as put them on inquiry as to the conveyance to said Dutton, that in equity they should have no benefit from said conveyance to said Richardson, but the same should be decreed to be cancelled and held for naught."

On July 17, 1897, before any pleading by Warner and Wine, an amended and supplemental bill was filed, accompanied with numerous interrogatories required to be answered by the defendants Warner and Wine. The averments of the original bill as to the fraudulent practices by which Dutton had obtained the property of complainant were reiterated. As respects the defendants Warner and Wine, it was charged that Dutton, on March 29, 1896, with the object of consummating the fraud which he had practiced upon the complainant, "entered into negotiations with said B. H. Warner & Co., or said defendants, Warner and Wine, through one Ellen S. Mussey, a lawyer of said city, to whom he applied for a loan on the security of this complainant's said property, and on information and belief this complainant charges that said Ellen S. Mussey, after bringing the matter to the attention of the said B. H. Warner & Co., or said Warner and Wine, reported to the said Dutton that a loan of from twenty-five to thirty thousand dollars could readily be negotiated on the security of said property, and stated that if he would return the following week she would have everything in readiness to complete the transaction. Accordingly the said Dutton came again to the said city of Washington on or about the 10th day of April, then next, and, going to the office of said B. H. Warner & Co., then and there signed a paper-writing or contract agreeing to sell all of said lots in square one hundred and thirty-four at and for the grossly inadequate price of twenty-five thousand dollars, said sum being less than one-half the price or consideration at which the said B. H. Warner & Co., had been authorized to sell the said lots by said Mary Alice Godfrey."

After averring that, by reason of the circumstances referred to, the defendants were put upon notice as to whether Dutton had honestly acquired the property, it was charged that it was the duty of defendants to have notified the complainant of the proposition of Dutton, but that no notice, in fact, was given. It was averred, moreover, that the said firm and the defendants Warner and Wine "purposely and intentionally concealed the fact that the said Dutton had signed the aforesaid contract to sell said lots at and for the grossly inadequate sum of $25,000, and that he was eager and anxious to dispose immediately of said lots so soon after acquiring the same." And further it was averred that "the said defendants, Warner and Wine, immediately set about the acquisition of said lots for their own benefit, and, with a view to, and for the purpose of, concealing their connection with said transaction, caused the title to the said lots to be conveyed to defendant Richardson by a pretended deed, bearing date

the 13th day of April, 1896," and that said Richardson, because of his youth and inexperience and his relationship to the defendant Wine, and his connection in business with the firm of B. H. Warner & Co., " was chosen as the instrument or tool of the said defendants Warner and Wine, for the consummation of their schemes to get possession of this complainant's said property for the said grossly inadequate sum of twenty-five thousand dollars."

A joint and several answer was filed on behalf of Warner and Wine, and therein it was averred that the lots in question were bought by them in good faith for an adequate consideration, and that the title was taken in the name of Richardson merely for the purpose of convenience in making subsequent conveyances.

Issue having been joined, testimony was taken, and in all about one hundred and forty witnesses were examined. But a portion only of the evidence, embodied in 600 printed pages, has been submitted for the inspection of this court. The court below, however, referred to the record as an "immense" one, and it was stated that the greater part of the evidence consisted of the testimony of witnesses introduced to contradict on the one hand or to support on the other the denial of the defendant Warner, made under oath in his answer to the amended bill and in answers to special interrogatories, that he had had any acquaintance with Dutton or ever had any business relations with him of any description until the transaction of April, 1896. This latter testimony is not contained in the printed record filed in this court.

The trial court decreed in favor of the defendants. In the opinion by it delivered the evidence respecting the different circumstances relied upon by the complainant to establish her case was reviewed, and it was held that the evidence was inadequate to support the charge of either actual or constructive fraud on the part of the defendants Warner and Wine.

Respecting one of the alleged circumstances charged to constitute a badge of fraud, viz., that Warner and Dutton were acquainted and had business dealings together prior to the sale in question, the court upheld the contention of Warner that he had had no acquaintance or dealings with Dutton prior to said purchase. Referring to the evidence on this branch of the case, the court said:

"A most careful examination has satisfied me beyond doubt that the entire testimony adduced in behalf of the complainant designed to show that Warner was ever in the company of Stephen A. Dutton on either of the occasions as described is absolutely untrue, and that by far the greater part of it consists of unfounded falsehoods, uttered from bad motives and attempted to be sustained by deliberate perjury."

The appellate court coincided with the opinion of the trial court, that the evidence introduced at the hearing failed to sustain the claim that

there had been either actual or constructive fraud, as alleged in the bill, on the part of Warner and Wine, and that on the contrary the proof showed there was no ground for awarding the relief prayed in the bill. It was, however, held that "from another point of view, made clear by the testimony, though it may not be specifically presented by the pleadings," the complainant, standing in the stead of Dutton, was entitled to disaffirm the sale and recover the property from Warner and Wine on repaying to said defendants the price actually paid by them to Dutton for the property and such further sums as might have been paid by them in the discharge of taxes and encumbrances. The ground for this conclusion was as follows: That the testimony showed that the firm of B. H. Warner & Co. were the agents of Dutton in negotiating the sale; and as it was further shown that Richardson, the purchaser named in the contract, was only an ostensible buyer, and that Warner and Wine, members of the firm of B. H. Warner & Co., were the real purchasers, and as it appeared that the fact of the purchase by Warner and Wine was not made known to Dutton, the latter would have had a right, by a "timely bill filed for that purpose," to set aside the sale on the ground that his agents had been unfaithful to their trust by buying the property of their principal for their own account without the knowledge and consent of their principal; that this right, thus existing in Dutton might be availed of in equity by the complainant, as the equitable owner of the property. As, however, the court found that the act of Warner and Wine in buying the property through their firm, as agents of Dutton, involved no intentional wrong, but constituted a mere legal or constructive fraud, it was held that the complainant in order to obtain equity must do equity, and that she could not avail of her right to disaffirm the purchase by Warner and Wine without reimbursing them for the money actually paid by them to Dutton, and such other sums, if any, paid by them in the discharge of taxes and encumbrances, less such sums as had been received, or ought in the exercise of due diligence to have received, as rents and profits of the property. After deciding that upon such payment the defendants should be decreed to reconvey the property to the complainant, the court said (16 App. D. C. 117):

"It may be that, to obtain this relief, the bill will have to be amended to some extent. If so, it can be done without reopening the case for further testimony. Doubtless, too, a reference to the auditor will be necessary for a statement of the account between the parties before a final decree can be entered.

"It follows that the decree dismissing the bill must be reversed, and the cause remanded, with directions to vacate the said decree, and take such further proceedings in accordance with this opinion as may be expedient and proper.

"The costs of this appeal will be divided equally between the parties."

Upon the filing of the mandate of the Court of Appeals in the Supreme Court of the District, the complainant prepared an amendment to the bill, in which it was averred that the defendants Warner and Wine, as members of the firm of B. H. Warner & Co., were agents of the defendant Dutton to find a purchaser for the lots in question; that said defendants did not inform Dutton that they were the real purchasers of the lots; that in consequence of such fact the purchase was fraudulent at law and voidable at the election of Dutton or of the complainant, for whom Dutton held title under a constructive trust, by reason of his fraudulent conduct in the premises. The amendment also contained an averment of a willingness, upon reconveyance of the title, to repay such sums as had been expended by the defendants for and on account of the property.

This proposed amendment to the bill was served upon the defendants accompanied with a notice that it was the intention of the complainant to apply to the court for leave to file the amendment and at the same time to ask a reference of the cause to an auditor to state the account without affording the defendants the opportunity of taking testimony to disprove the allegation of the amendment that the firm of B. H. Warner & Co. were agents of Stephen A. Dutton. The defendants at once filed an answer to the amendment, in which the following averments were contained:

"1. They deny that the firm of B. H. Warner & Co. were agents for the defendant Stephen A. Dutton, to find a purchaser for the real estate in controversy, as alleged by said amendment, or that the said firm or any of its members ever were the agents of the said Stephen A. Dutton for any purpose whatsoever. It is true that in Exhibit L. W. R. No. 1, filed as an exhibit to the answer of the defendant Louis W. Richardson, to the original bill in this cause, 'B. H. Warner & Co.,' are mentioned as agents of unnamed parties of the first part, but they aver that this circumstance grew out of the fact that a printed form of memorandum of sale belonging to the said firm, in which their names were printed as agents of the vendor, was used in the transaction, the same being the said Exhibit L. W. R. No. 1, and by a purely clerical omission the name of the said firm was not struck out and that of Mrs. Ellen S. Mussey, who was the only agent of the said Stephen A. Dutton in the matter, inserted instead. So far from being the agents of Stephen A. Dutton, neither of these defendants nor any member of the firm of B. H. Warner & Co. was aware at the time the said memorandum of sale was prepared who was the owner of the property described in it, agency for which owner is now sought to be charged upon them, and the name of the vendor was accordingly left blank in the said memorandum for that reason. Both the said Ellen S. Mussey, who was the agent of the said Stephen A. Dutton, and the said Stephen A. Dutton himself well knew throughout the entire transaction that the firm of B. H. Warner & Co. represented the purchaser of the said property, and in no way represented or claimed to represent the said Stephen A. Dutton."

The answer further averred that, in the beginning of the controversy, the defendants had offered to convey to complainant the property in dispute upon being reimbursed simply the money which they had actually expended, and that this offer was rejected; that the complainant having thus rejected said offer, and having subjected the defendant to the expense of a long and costly lawsuit to disprove the charges of fraud and wrong made against them, which they had successfully done, and the defendants, in doing this, having been compelled to pay out more than $6,000 in costs and expenses, it was inequitable to allow the complainant to amend her bill by substituting a new and distinct ground of relief, and upon such ground to allow her to recover the property on simply reimbursing the defendants the amount of the purchase price and their actual outlay in the care of the property, without any allowance of interest or repayment of the expenses of the litigation. It was insisted, moreover, in the answer that, if the amendment was allowed, the defendants were entitled to be heard, in order to show that the averments contained in it were untrue, as specially set up in the answer. The court allowed the proposed amendment to be filed, and, doubtless conforming to the opinion of the Court of Appeals, where it was stated that the bill could be amended "without reopening the case for further testimony," in effect denied the right of the defendant to offer any testimony to disprove the truth of the averments contained in the amendment by ordering a reference to the auditor with directions simply to ascertain and report to the court "the amount of the money actually paid by Warner and Wine to the defendant Dutton, and of other sums which they had paid in discharge of the taxes and encumbrances, less such sums as had been received, or ought, in the exercise of due diligence, to be received, as rents and profits of the property from the commencement of their possession."

The auditor reported that the disbursements by Warner and Wine, for and on account of the property, for taxes, interest on trust indebtedness, water rents and repairs, exceeded the rents and profits by $3,868.95, which sum added to $6,586.33—the sum paid for the property by Warner and Wine less the commission—made a total of $10,455.28, and was the sum which the complainant should pay to the defendants, as a condition of divesting them of their interest in the property. It will be observed that no interest was allowed upon the outlays of Warner and Wine, nor was any allowance made for the costs and disbursements occasioned in making their defense in the protracted litigation. These costs and disbursements were stated to aggregate $6,918.85, of which $1,626.00 was for examiner's fees.

Exceptions were filed to the report of the auditor, but the same were overruled, and a final decree was entered ordering the defendants to convey the lots to the complainant upon the payment within ninety days of

$10,455.28 and any further expenditure on account of the property made after the close of the account embraced in the report of the auditor. It was further provided that in the event of non-payment within the time specified the bill of complaint should stand dismissed, with costs; and in the event of payment the respective parties should pay their own costs. On appeal the decree just referred to was affirmed, and, the Court of Appeals, in its opinion, stated that "the action of the court was in strict conformity with the mandate of this court and the accompanying opinion." (App. D. C. .) This appeal was then taken.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The main asserted badges of fraud upon which the complainant based her contention that the conveyance by Dutton to Richardson on April 13, 1896, should be treated, so far as the complainant was concerned, as a nullity, were: 1. The gross inadequacy of the consideration; 2. A prior agency of the firm of B. H. Warner & Co., for the sale of the lots on behalf of the complainant; 3. The haste with which the negotiations for the sale were had and the sale was completed; and, 4. The execution of title to Richardson for the benefit of Warner and Wine and the concealment of the interest of the last-named defendants in the purchase.

To sustain and disprove these contentions voluminous evidence was introduced, which was elaborately and carefully reviewed in the opinions delivered by the courts below. Both the trial and appellate court concurred in holding that the proof absolutely vindicated the defendants from the charges of wrongdoing made against them and clearly established the want of merit in the contentions. As no appeal was taken by the complainant from the first decree of the Court of Appeals, and as the relief asked by the last amendment to the bill in effect abandoned the claim that the defendants had committed a fraud upon the complainant, by basing the claim for relief solely upon the hypothesis of a constructive fraud having been practiced upon Dutton, the entire want of foundation for the charges of wrongdoing urged against the defendants and upon which the long litigation proceeded may be taken as conclusively established.

Whatever may be said of the failure of Richardson in his answer to the original bill to fully and fairly disclose the actual transaction, certainly his not doing so did not long mislead the complainant or conceal from her the real facts. There is no question possible on this subject, since the complainant testified that shortly after the filing of the answer of Richardson to the original bill, statements of the defendant Warner made to the attorney of the complainant in the city of New York, disclosing the actual transaction, were communicated to her, and it also appears that the attorney for

the defendants, in company with the defendant Wine, called upon the attorney of the complainant in the city of Washington and stated the facts of the transaction to him. With full knowledge, then, of the facts, and because of such knowledge, the amended and supplemental bill was filed making Warner and Wine defendants as the real purchasers.

The closest inspection of the bill, as originally filed or as amended, discloses no averment which can be construed as predicating relief upon the theory that Warner and Wine had practiced a constructive fraud upon Dutton by purchasing, without his knowledge and consent, property which had been placed by him in the hands of the firm of B. H. Warner & Co. for sale. On the contrary, the sole ground of relief was the claim that Warner and Wine had in effect conspired with Dutton to defraud the complainant, and because thereof the complainant was entitled to recover the property from the said defendants without in anywise reimbursing them for their expenditures in the matter. The answer of Warner and Wine, whilst conceding that they were the real purchasers, took issue upon the charges of wrong and fraud alleged against them.

Looking into the record, we repeat, nothing is found conveying even an intimation that the parties considered during the proceedings leading up to the joinder of issue and trial which ensued that any issue existed between them than the one made by the pleadings as above stated. Indeed, the record makes clear the fact that both parties, in taking testimony, acted upon the assumption that it was a fact beyond dispute that the firm of B. H. Warner & Co. at the time of the sale represented the purchasers, Warner and Wine, and not the seller, Dutton. Thus, in interrogating the witness Mussey, who was at the time of the sale the attorney of Dutton, and who was called for the defendants, the following question was asked by counsel for complainant:

"Q. So that at the time of this transaction, in April, 1896, when you agreed with Mr. Warner and Mr. Wine to share with them the commission, they to have two-thirds, or $500, and you to have one-third, or $250, so far as any knowledge that you had on the subject is concerned, you were treating with them *as the brokers of Louis W. Richardson, or whoever the purchaser was.* Is that so?

"A. I treated with them as the brokers, and had no interest in who purchased it, so long as the money was paid for it."

Again, in cross-examining the defendant Wine, the following question was asked by the complainant:

"Q. Why did you conceal from Mrs. Mussey, at the time of the purchase of said property in April, 1896, your true connection with the said transaction as purchaser, and *hold yourself out as the broker or representative of the dummy in whose name you took title to the property*, taking two-thirds of the commission for selling the property to yourself?"

Under the circumstances which we have stated, the first question which arises is, Was the Court of Appeals justified, after concluding every issue actually litigated, in favor of the defendants, in remanding the case for the purpose of allowing the complainant to amend the bill in order to assert a new and distinct ground of relief constituting a complete departure from the theory upon which the bill had been framed and upon which the case had been tried? And if it was so justified, was it authorized, whilst thus remanding the case for the purpose of allowing the amendment, to provide that the case should not be reopened; in other words, that the amendment could be made and relief granted on it and the defendants be deprived of all opportunity of interposing any defense? Inverting the order in which the questions have been just stated, and under the assumption that the court was justified on the record before it in remanding the case for the purpose of allowing the amendment, we think it was error to reopen the case in order to allow the amendment asserting the new and distinct ground of relief, and at the same time to treat the case as not reopened and the record as closed, the result being to deprive the defendants of all opportunity of a hearing on the new ground of relief permitted to be asserted against them. (*Hovey* v. *Elliot*, 167 U. S. 409.)

This conclusion would necessitate, in any event, a reversal, in order that a trial be had of the new and distinct issue raised by the amendment made under the sanction of the court. This does not, however, relieve us from the necessity of determining whether the court was justified in allowing the amendment, since, if it be found that error was committed in that particular, the appellants would be entitled to a decree of reversal, finally disposing of the controversy.

Obviously, the defendants Warner and Wine did not on the trial introduce any evidence to rebut a claim which was not made and which was in substance at war with the theory of the case propounded against them. As observed by the Court of Appeals, if the right existed in Dutton to disaffirm the sale to Richardson, as having been, in fact, made to his agents, it would have been incumbent upon Dutton, if he desired such relief, to have filed "a *timely* bill for that purpose." The same obligation necessarily rested upon the complainant of distinctly and promptly asserting a right to relief of like character, if she desired such relief. This, however, was not done.

It cannot be said that the complainant failed in this particular because of ignorance on her part of the ground of relief in question, for, as we have already shown, the contract formed a part of the answer of Richardson, and the facts as to Warner and Wine being the real purchasers were known to the complainant at the time of the filing of the amended and supplemental bill. Indeed, certain also it is that every fact in the record from which the Court of Appeals deduced the conclusion that B. H. Warner &

Co. were the agents of Dutton is shown to have been known to the complainant before the filing of the amended and supplemental bill. It would be highly inequitable to permit a litigant to press with the greatest pertinacity for years unfounded demands for specific and general relief, however much confidence he may have had in such charges, necessitating large expenditures by the defendants to make a proper defense thereto, and then, after the submission of the cause, when the grounds of relief actually asserted were found to be wholly without merit, to allow averments to be made by way of amendment, constituting a new and substantive ground of relief. This is especially applicable when the facts upon which such amendment rests were known at the incipiency of the litigation and the character of the relief was such as called for promptness in asserting a right thereto. Cogency is added to these considerations when it is borne in mind that if the facts had been embodied in the bill, so as to have allowed issue to be taken thereon, they might have been fully met and disproved by the defendants. Even if these general equitable considerations might, under exceptional circumstances, be not controlling, they are certainly so when the special facts in the case in hand are borne in mind. Thus it is shown that soon after the filing of the answer of Richardson, when Warner and Wine, through their attorneys, called the attention of the counsel of complainant to the fact that Warner and Wine were the real purchasers, the defendants named expressed a willingness to treat the purchase by them from Dutton as a loan, and to convey the property to the complainant upon being reimbursed their advances and expenses. This was declined. Again, in open court, in February, 1898, the proposition was distinctly made by counsel for the defendants to treat the transaction as a loan, "and to make conveyance of the property to the complainant on being reimbursed their actual advances." The response to this proposition was couched in the following language:

"Mr. Keane: Counsel for complainant desires to say that an offer of this kind made after the suit has been commenced and after it has been in litigation since September, 1896, and after a number of witnesses have been examined upon the part of the complainant, and after the complainant has been obliged to incur heavy expenses of retaining counsel, and of incurring the further expenses necessarily incident to the preparation of the trial of the case, such a proposition comes too late, and the complainant declines such a proposition for the reasons stated, and for the further reasons that the defendants were not at the time of the alleged purchase of such property *bona fide* purchasers thereof, but had knowledge of such facts and circumstances as put them upon inquiry and deprived them of the standing in a court of equity of *bona fide* purchasers."

Thus the defendants were distinctly notified that no adjustment was possible, but that the intention was to divest them of the property without reimbursement in whole or in part.

The complainant thus having expressly declined to put an end to the litigation, upon the theory that because of the *mala fides* of Warner and Wine she was entitled to an unconditional recovery of the property, she ought not, in equity, upon the collapse of her efforts to establish fraud and bad faith on the part of the defendants, to be allowed to reform her pleadings and change her attitude towards the defendants in order to obtain that which she had expressly elected not to seek and had persistently declined to accept.

The decrees of the Court of Appeals of the District of Columbia should be reversed, and the cause remanded to that court with instructions to reverse the decree of the Supreme Court of the District of Columbia, passed on June 13, 1900, ordering a conveyance to the complainant on compliance with certain conditions, and to affirm and reinstate the decree of the Supreme Court of the District of Columbia, passed January 24, 1899, dismissing the bill and amended bills as against certain of the defendants.

And it is so ordered.

Mr. Justice HARLAN and Mr. Justice GRAY did not hear the argument and took no part in the decision of this case.

True copy.

Test:

Clerk Supreme Court, U. S.